

**1994 REGULATIONS
GOVERNING UNDERGROUND TANK TESTERS
(CHAPTER 17, CHAPTER 3, TITLE 23,
CALIFORNIA CODE OF REGULATIONS)**

1994

INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND TANK TESTERS
(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

I. Notice of Proposed Rulemaking

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(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)


a. Transmittal memo to Office of
Administrative Law (OAL)

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(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

Memorandum

To: John D. Smith, Deputy Director
Office of Administrative Law
555 Capitol Mall, Suite 1290
Sacramento, CA 95814

From: 
Walt Pettit
Executive Director
STATE WATER RESOURCES CONTROL BOARD
901 P Street, Sacramento CA 95814

Date: JUN 1 1993

Subject: NOTICE OF 45-DAY COMMENT PERIOD FOR PROPOSED REGULATIONS FOR
UNDERGROUND STORAGE TANK TESTERS - DIVISION 3 OF CHAPTER 17 OF
TITLE 23 OF THE CALIFORNIA CODE OF REGULATIONS

The State Water Resources Control Board (State Water Board) proposes to amend some existing regulations in Chapter 17 of Title 23 of the California Code of Regulations. The main purpose of the rulemaking is to implement changes to section 25284.4 of the Health and Safety Code concerning experience requirements for tank testers. AB 1359 (statutes of 1991, Cortese) added a requirement for field experience combined with a Course of Study as one of the ways to qualify for licensure as a tank tester. Amending section 2760 of the California Code of Regulations implements this statutory change.

We are submitting a Notice of Proposed Rulemaking for publication in the California Regulatory Notice Register. We are also submitting the following attachments:

- Attachment 1: Two copies of the Face Sheet (Form 400) and four copies of the Notice including the Informative Digest.
- Attachment 2: Text of the proposed regulations in strikeout and underline format.
- Attachment 3: Initial Statement of Reasons

This Notice will be mailed to all persons who have filed a request with the State Water Board to receive notice of regulatory actions, all licensed tank testers, local government agencies which administer underground storage tank programs, and Regional Water Quality Control Boards.

If you have questions, please call Harry Schueller, Chief, Division of Clean Water Programs, at 227-4428. The staff person working on these regulations is Barbara Wightman who can be reached at 227-4318.

Attachments (3)

b. Face Sheet (Form 400)

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NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See Instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 7-90)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER	PREVIOUS REGULATORY ACTION NUMBER
	293-0601-02			

For use by Office of Administrative Law (OAL) only

<p>1993 JUN -1 PM 10:51</p> <p>RECEIVED FOR FILING</p> <p>JUN 01 '93</p> <p>Office of Administrative Law</p> <p>NOTICE</p>	<p>PUBLICATION DATE</p> <p>JUN 11 '93</p> <p>REGULATIONS</p>
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AGENCY	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Tank Tester Licensing Regulations	23	2730	June 11, 1993
3. NOTICE TYPE	4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
<input checked="" type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	Barbara Wightman 227-4318		
OAL USE ONLY	ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
	<input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)	
SECTIONS AFFECTED	ADOPT
	AMEND
	Sections 2730 through 2802
TITLE(S)	REPEAL
23	

2. TYPE OF FILING

<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code, § 11346)	<input type="checkbox"/> Resubmittal	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)	<input type="checkbox"/> Emergency (Gov. Code, § 11346.1(b))
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above.			
<input type="checkbox"/> Print Only			
<input type="checkbox"/> Other (specify)			

3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)		
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input type="checkbox"/> Effective other (Specify)

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

<input type="checkbox"/> Department of Finance (Form STD. 399)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify)		

6. CONTACT PERSON	TELEPHONE NUMBER
-------------------	------------------

7. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
Walt Pettit	5-28-93

TYPED NAME AND TITLE OF SIGNATORY

Walt Pettit, Executive Officer

c. Notice of Proposed Rulemaking

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STATE WATER RESOURCES CONTROL BOARD
DIVISION OF CLEAN WATER PROGRAMS
2014 T STREET, SUITE 130
P.O. BOX 944212
SACRAMENTO, CA 94244-2120



June 11, 1993

TO: All Interested Parties

FROM:


Mike McDonald, Manager
Underground Storage Tank Program

SUBJECT: NOTICE OF PROPOSED RULEMAKING - TANK TESTER LICENSING
REGULATIONS

Enclosed is a copy of a "Notice of Proposed Rulemaking" announcing the pending amendment of regulations governing tank testers. The proposed regulations reorganize and clarify existing regulations, repeal outdated language, and adopt new sections.

The Informative Digest contained within this Notice explains the amendments the State Water Resources Control Board (State Water Board) proposes to make. You are invited to submit written comments to me at the address above, any time between now and 5 p.m., July 26, 1993, which marks the end of the state-mandated 45-day comment period. All comments received will be considered and responded to in the Final Statement of Reasons. The State Water Board does not plan to hold a public hearing on these proposals unless a written request is received no later than 5 p.m., July 12, 1993.

If you have any questions regarding this notice, please call Barbara Wightman at (916) 227-4318.

NOTICE OF PROPOSED RULEMAKING

TITLE 23. WATER RESOURCES CONTROL BOARD

NOTICE IS HEREBY GIVEN that the Water Resources Control Board ("State Water Board") proposes to amend, adopt, or repeal the regulations described below after considering all comments, objections, or recommendations regarding the proposed action.

PROPOSED REGULATORY ACTION

The State Water Board proposes to amend Articles 1 through 8 of Division 3, Chapter 17 of the California Code of Regulations regarding the regulation of underground storage tank testers. Section 2670 of Article 4 is amended to implement section 25284.4(c)(1)(B) of the Health and Safety Code which was amended in 1991 pursuant to AB 1359.

PUBLIC HEARING

The State Water Board has not scheduled a public hearing on the proposed action. However, interested parties may make a written request for a hearing no later than 15 working days before the end of the 45-day comment period.

WRITTEN COMMENT PERIOD

Interested persons may submit written comments relevant to the proposed regulatory action. Comments must be received by 5 p.m. on July 26, 1993. Submit comments to: Mike McDonald, Division of Clean Water Programs, Underground Storage Tank Program, P.O. Box 944212, Sacramento, CA 94244-2120.

All comments received during the 45-day comment period will be considered and responded to by amending the proposed regulations or explaining in the Final Statement of Reasons why the changes were not made. Once the 45-day comment period has ended and any changes are made as a result of comments, the proposed regulations will be presented to the members of the State Water Board for adoption.

AUTHORITY AND REFERENCE

Chapter 6.7, Division 20, section 25284.4 of the Health and Safety Code authorize the State Water Board to amend and adopt the proposed regulations.

INITIAL STATEMENT OF REASONS

An Initial Statement of Reasons for amending these regulations has been prepared by the State Water Board. The statement includes the specific purpose for each amendment, interpretation, or requirement and the factual basis for determining the necessity of each regulatory interpretation, or requirement. The statement is available on request, along with the full text of the proposed regulations.

INFORMATIVE DIGEST

Nonsubstantive Changes

The State Water Board proposes to make numerous editorial changes to the regulations and some sections have been reworded or reorganized for clarity.

Article 1. General Provisions

Existing regulations define an "approved course of study." Proposed regulations add the requirement to administer a written examination to all students who participate in a course of study. Proposed regulations remove the requirement for "hands-on" tank testing in the field as part of the course. §2731

Existing regulations define "fraud" or "deception." Proposed regulations expand on the definition by including the filing of a false tank test report with a state or local agency or tank owner or operator; manipulating or misreading test data; providing a report for a pipeline or tank which was not actually tested; and accepting or agreeing to accept compensation for false or favorable test results. §2731

Article 2. Administration

Existing regulations allow licensees to request the removal of their telephone numbers from published lists of licensees. This provision is removed. §2740

Existing regulations state that a copy of the roster of tank testers and information about enforcement actions shall be furnished to all local agencies after each examination administration. Proposed regulations state that the roster will be furnished at least twice per calendar year to local agencies and upon request to interested parties. Information which meets the provisions of the Information Practices Act regarding enforcement actions will be provided as available to local agencies and upon request to interested parties. Existing regulations require a fee to be paid for the roster and for the

enforcement action information. Proposed regulations deletes this fee requirement. §2740

Article 4. Licensing

Existing regulations state that an applicant for tank testing licensure may satisfy experience requirements by attending an approved course of study and completing training from an equipment manufacturer. Proposed regulations require six months of tank testing experience in addition to the course of study. This amendment is made to implement section 25284.4 of the Health and Safety Code which was amended in 1991 pursuant to AB 1359. 2760

Existing regulations do not establish specific final filing dates for applications for tank tester examinations. Proposed regulations require applications to be postmarked three weeks before the examination date. §2761

Existing regulations require the Office of Tank Tester Licensing to notify applicants of their examination results within 60 days of the examination. Proposed regulations reduce the timeframe to 30 calendar days. §2763

Existing regulations require the Office of Tank Tester Licensing to send renewal notices to licensees 90 days before expiration of the licenses. Proposed regulations reduce the timeframe to 60 days before expiration. §2763

Existing regulations require licensees to renew their licenses 60 days before expiration. Proposed regulations reduce the timeframe to 30 days. §2763

Existing regulations require the Office of Tank Tester Licensing to notify applicants of deficiencies in their applications within 30 days of receipt. Proposed regulations reduce the timeframe to 15 days. §2763

Article 5. Conduct of Business and Prohibited Acts

Existing regulations do not require tank testers to sign their tank test reports or include their license numbers on the reports. Proposed regulations make these requirements. §2770.5

Existing regulations require tank testers to be trained in the equipment they use to test tanks before using the equipment. Proposed regulations require them to supply the Office of Tank Tester Licensing with a copy of the manufacturer's certificate or other proof of training before using the equipment. §2771

Existing regulations list some disciplinary measures which may be

Proposed regulations expands this list by adding notices of warning, letters of caution, and fine assessments. (Fine assessments are a form of civil liability which is already included in the regulations, but which may not be clear to the reader.) §2773

Existing regulations provide a list of violations for which disciplinary action may be taken. Proposed regulations expand on this list by adding: providing test results for a pipeline or tanks which was not actually tested; failing to follow protocol as evaluated by a third-party evaluator to meet EPA standards; using pipeline and tank testing equipment which does not meet the requirements of Article 4 of Chapter 16. §2773

Changes with Regulatory Effect

DISCLOSURES REGARDING THE PROPOSED ACTION

- Mandate on local agencies and school districts: None
- Cost or savings to any state agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with Government Code section 17561: None
- Other nondiscretionary costs or savings imposed upon local agencies: None
- Cost or savings in federal funding to the state: None
- Cost impact on private persons or directly affected businesses: None
- Significant adverse economic effect on small business: None
- Significant effect on housing costs: None

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code section 11346.5, subdivision (a)(7), the State Water Board must determine that no alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

The State Water Board invites interested persons to present statements or arguments with respect to alternatives to the

proposed regulations during the written comment period.

CONTACT PERSONS

Inquiries concerning the substance of the proposed action may be directed to: Dave Holtry, Division of Clean Water Programs, Underground Storage Tank Program, P. O. Box 944212, Sacramento, CA 94244-2120; telephone: (916) 227-4303, ATSS: 497-4303.

Requests for copies of the text of the proposed regulations, the Initial Statement of Reasons, the modified text of the regulations, if any, or other information upon which the rulemaking is based should be addressed to: Barbara Wightman, Division of Clean Water Programs, Underground Storage Tank Program, P. O. Box 944212, Sacramento, CA 94244-2120; telephone: (916) 227-4303, ATSS: 497-4303.

AVAILABILITY OF INITIAL STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The State Water Board will have the entire rulemaking file available for inspection and copying throughout the rulemaking process at its office at the above address. As of the date this notice is published in the California Regulatory Notice Register, the rulemaking file consists of this notice, the text of the existing and proposed regulations, and the Initial Statement of Reasons.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

Following the 45-day comment period, the State Water Board may adopt the proposed regulations substantially as described in this notice. If modifications are made which are sufficiently related to the originally proposed text, the modified text -- with changes clearly indicated -- shall be made available to the public for at least 15 days prior to the date on which the State Water Board adopts the regulations. Requests for copies of any modified regulations may be made by contacting Barbara Wightman at the address or telephone number above. The State Water Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

d. Rulemaking Index

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 - b. Final Statement of Reasons including responses to comments
 - c. Copy of Chapter 6.7, section 25284.4, Health and Safety Code for reference
 - d. Clean text of regulations (without underline and strikeout)
 - e. Form 399 Fiscal Impact Statement

CERTIFICATION

The foregoing index represents the rulemaking file of the subject proposed regulations of the Water Resources Control Board, Division of Clean Water Programs, Underground Storage Tank Program. The rulemaking file as submitted is complete. The rulemaking record for these regulations was closed at 5 p.m. on July 26, 1993. The Board finds that the proposed amendments cause no adverse economic impact on business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed at Sacramento, California on April 18, 1994.

for James Conelley

Harry M. Schueller, Chief
Division of Clean Water Programs
State Water Resources Control Board

e. Text of Proposed Rulemaking
originally noticed to the public
(in underline and strikeout
format)

1994

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STATE WATER RESOURCES CONTROL BOARD

DIVISION OF CLEAN WATER PROGRAMS

2014 T STREET, SUITE 130

P.O. BOX 944212

SACRAMENTO, CA 94244-2120



PROPOSED AMENDMENTS TO

CALIFORNIA CODE OF REGULATIONS

TITLE 23 WATERS

DIVISION 3 WATER RESOURCES CONTROL BOARD

CHAPTER 17 UNDERGROUND TANK TESTER REGULATIONS

JUNE 1993

CALIFORNIA CODE OF REGULATIONS
TITLE 23 WATERS
CHAPTER 17 UNDERGROUND TANK TESTER REGULATIONS

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ARTICLE 1. GENERAL PROVISIONS

2730 Purpose

The State Water Board is vested with all the functions and duties relating to the administration of the Tank Tester License Program (Ssection 25284.4 Health and Safety Code). Specifically, the purpose of the Tank Tester License Program is to protect the environment and public health and safety by establishing minimum qualifications for those who test underground storage tanks and associated piping and by establishing a licensing program for underground storage tank testers.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2731 Definitions

- (a) "Address of record" means the address at which the licensee wishes to be contacted by the State Water Board. The address of record is public information.
- (b) "Advertisement" means any written or printed communication, for the purpose of soliciting, describing, or promoting the licensee's business including a brochure, letter, pamphlet, newspaper, periodical, or publication or other writing. Advertisement also includes a radio, television, or similar airwaves transmission, or videotape recording which solicits or promotes the licensee's business. It does not include:

- (1) a free directory listing which does not allow space for a license number;
 - (2) any printing or writing on buildings or vehicles where the purpose of the printing is identification;
 - (3) any printing, ~~or~~ writing, or other communication, ~~memoranda, or any other writing~~ used in the ordinary course of business where the purpose of the ~~writing~~ communication is other than solicitation or promotion of business.
- (c) "Applicant" means any person ~~seeking a tank tester license who files an application for a tank tester license in accordance with the provisions of section 2761.~~
- (d) "Approved course of study" means a course of study approved by the Division after being recommended by a committee appointed by the Division and which includes, but is not limited to:
- (1) General principles of tank and pipeline piping testing.
 - (2) Basic understanding of the mathematics relating to tank testing- ;
 - (3) Understanding of test procedures, principles, and equipment.

- (4) Knowledge of the regulations and laws governing ~~the regulation of~~ pertaining to underground storage tanks.
- (5) Proper safety procedures.
- (6) ~~Hands-on use of tank testing equipment.~~

Written examination to be administered to each student to determine the student's knowledge and understanding of the course of study material.

Anyone who desires to provide an approved course of study shall furnish the Division with the following material:

- (A) ~~A syllabus or outline of the course of study.~~
An instruction manual proposed for use by the instructor which covers all material and information to be given to students and which is in accordance with the provisions of subdivisions (d)(1)-(7) of this section.
- (B) ~~Information demonstrating that the course of study includes items listed in (d)(1)(6), above~~
Copies of all handout material to be given to students.
- (C) ~~A description of the method or methods used by the provider to determine whether the enrollee has successfully completed the course of study~~
Copies of all video tapes to be used for instructional purposes.

- (D) Names, addresses, telephone numbers, and related work experience of each instructor and information as to the subject matter to be taught by each instructor.
- (E) Physical location of classroom instruction.
- (F) Physical location of underground storage tanks to be used for hands-on training.
- (G) A copy of the written examination to be administered to students to determine their knowledge and understanding of the course of study material.
- (e) ~~"Assignment" means to permit an employee or agent in his or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatsoever to conduct business for which a license is required under these regulations.~~ giving permission to another to use one's license for the purpose of conducting the business of a tank tester, including advertising, billing, and furnishing reports to clients.
- (f) "State Water Board" as used in these regulations means the five members of the State Water Resources Control Board.
- (g) "Declarant" means a person who verifies an applicant's tank testing experience by declaring personal knowledge of the experience in writing, under penalty of perjury.

~~(g)~~ (h) "Direct and personal supervision" means the watchful care and inspection of the conduct and performance of a tank tester by a licensee while the licensee is and the tank tester are physically located at the work site.

~~(h)~~ (i) "Division" means the Division of the State Water Board in which the Office of Tank Tester Licensing is located.

~~(i)~~ (j) "Fraud" or "deception" includes but is not limited to:

(1) knowingly making a false statement relating to the results of a tank integrity test or methods or information obtained in the course of employment;

(2) fabricating evidence;

(3) making a representation that any part of a tank integrity testing method or associated equipment is certified, approved, or in any way sanctioned by the State Water Board unless the method or equipment is actually certified, approved, or sanctioned by the State Water Board;

(4) failing to provide the services for which compensation has been received or which were agreed to by contract.

(5) filing a false tank test report with a state or local agency or tank owner or operator or

providing test results for a tank or piping test which was not tested in whole or in part;

(6) manipulating or causing the manipulation of test data including willfully or negligently misreading or misinterpreting test data;

(7) accepting or agreeing to accept compensation for false test results.

~~(j)~~ (k) "License" means a pocket card issued by the State Water Board which authorizes the licensee to conduct the business of an underground storage tank tester. The license shall ~~include~~ contain but not be limited to the following:

- (1) a clear, full-face, one inch by one inch color photograph taken within one year immediately preceding the date of filing the application;
- (2) the ~~make~~ first and last name of the licensee;
- (3) the address of record of the licensee;
- (4) the license number;
- (5) the expiration date of the license.

The license is the property of the State Water Board.

~~(k)~~ (l) "Licensee" means any person licensed under these regulations as a tank tester and who possesses a current and valid tank tester license issued by the State Water Board.

- (l) (m) "Local agency" means the department, office, or other agency of a county or city designated pursuant to Section 25283 of the Health and Safety Code.
- (m) (n) "Manufacturer" means any business which produces and sells tank integrity testing equipment and which may provide training in the use of that equipment.
- (n) (o) "Office of Tank Tester Licensing" means the unit of the Division which exercises the day-to-day functions of the ~~Division in the~~ Underground Tank Tester License Program.
- (o) (p) "Qualifying Experience" means, ~~prior to January 1, 1990, experience in all aspects of tank integrity testing including setting up and operating equipment, collecting data and producing reports, after successfully completing training from a manufacturer in the appropriate test procedures. On and after January 1, 1990, "qualifying experience"~~ means experience in all aspects of tank integrity testing including personally setting up and operating tank integrity testing equipment, collecting data and producing reports under the direct and personal supervision of a licensed tank tester, during which time training is successfully completed from a manufacturer in the appropriate test procedures.
- (p) (q) "Tank integrity test" means a ~~test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the Board.~~ tank integrity test as defined in section 2611 of Chapter 16 of the California Code of Regulations.

- (g) (r) "Tank tester" means ~~an individual~~ any person who performs ~~tank~~ integrity tests on underground storage tanks or associated piping.

Authority: H&SC 25284.4

Reference: H&SC 25284.4 and 25283

ARTICLE 2. ADMINISTRATION

2740 Record of Licensees and ~~Enforcement Actions~~

~~The Office of Tank Tester Licensing shall maintain a current list of all licensed tank testers, including a record of enforcement actions taken. A roster shall be prepared showing names, address, and telephone numbers of record of all licensees and any enforcement actions completed. The telephone number may be omitted from the directory upon request of the licensee. One copy of the current roster of licensees shall be furnished to all local agencies after each examination administration. Additional copies of the roster of licensees shall be available to local agencies and the public on application to the Office of Tank Tester Licensing, at a price per copy sufficient to reimburse the Board for the cost of publication. A roster of enforcement actions completed will be available upon request at a price per copy sufficient to reimburse the Board for the cost of publication.~~ The Office of Tank Tester Licensing shall maintain a current roster of the names, addresses, telephone numbers, and license numbers of all licensed tank testers. The roster shall be furnished to local agencies at least twice per calendar year and shall be made available to local agencies and interested parties upon request.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2741 Record of Disciplinary Actions

Written information regarding disciplinary action taken against licensees shall be maintained by the Office of Tank Tester Licensing and information which meets the provisions of the Information Practices Act shall be furnished to local agencies as available and to interested parties upon request.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 3. APPLICATION OF REGULATIONS

2750 Necessity of License

~~On and after January 1, 1990, a~~ All tank integrity tests conducted within this state, as defined in Section 2731 2611 of Article 1 of Chapter 16 and conducted within this state, must be performed by or under the direct and personal supervision of a tank tester with a currently current and valid tank tester license issued pursuant to these regulations. No person shall be licensed unless ~~that person meets the~~ requirements as specified in Article 4 of these regulations have been met.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2751 Local Regulation; Ordinances

The provisions of these regulations shall not prevent the local authorities of any city, and/or county from: (a) requiring tank tester licensees to meet the requirements for and obtain a local business permit; (b) requiring

licensees to register their name and file a copy of their State Water Board-issued tank tester license with the city and/or county. No fee, other than a fee for a local business permit, may be charged nor may any application be required by the city and/or county for that registration.

Authority: H&SC 25284.4
Reference: H&SC 25299.2

ARTICLE 4. LICENSING

2760 License Requirements

An applicant for a tank tester license shall have successfully completed training from the manufacturer of the tank and piping test equipment to be used and shall:

- (a) demonstrate have completed a minimum of either one year of verifiable qualifying experience testing at least ~~fifty~~ 50 underground storage tanks or have successfully completed both 6 months of qualifying experience during which at least 50 underground storage tanks were tested and an approved course of study as defined in §section 2731 of Article 1 and training from a manufacturer in the test procedure to be used;
- ~~(b) for an applicant applying to take an examination during the 1989 calendar year, the applicant may document in the application specified in Subsection~~
- ~~(c) that he or she will have completed the qualifying experience requirement prior to being~~

~~issued a license on January 1, 1990. The Division may require the applicant to verify completion of qualifying experience prior to issuing a license;~~

- (e b) file with the Division a completed application as specified in Section 2761;
- (d c) pay the nonrefundable application fee and the examination fee as specified in Section 2800 of Article 8 7;
- (e d) provide two color photographs as specified described in Section 2731 of Article 1;
- (f e) pass an examination administered under the direction of the Division as specified in Section 2762; and
- (g f) pay the license fee as specified in Section 2800 of Article 8 7 upon notification by the Division.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2761 Application for Licensure

- (a) Content - An application shall include but not be limited to:
 - (1) the full name, residence address, and the business and residence address of record of the applicant and the name under which the

~~applicant does business~~ employer name and
address if applicant is not self employed;

- (2) a statement signed under penalty of perjury by a ~~person other than the applicant declarant,~~ under penalty of perjury, verifying either the applicant's qualifying experience as specified in Section 2760(a) and (b) or completion of a course of study approved by the Division;
 - (3) verification that the applicant was trained by the manufacturer in the principles and use of the equipment and method which the applicant used to gain his or her qualifying experience and the tank and piping test equipment and method the applicant intends to use after licensure;
 - (4) applicant's original signature signed under penalty of perjury and date the application was signed;
 - (5) the nonrefundable application fee and the examination fee as specified in ~~Section 2800 of~~ Article § 7; and
 - (6) The Division may require the submission of any additional pertinent information, evidence, statements, or documents which would support the application for licensure.
- (b) Submittal - An application shall be postmarked by ~~the final filing date set forth in the examination information and schedule~~ no later than three weeks before the examination. Applications postmarked

after ~~the final filing~~ that date may be held over and processed for the next scheduled examination.

- (c) Review - The Division shall review the application supporting documents to determine the applicant's eligibility for licensure.
- (d) Notice - The Division shall notify applicants in writing within ~~thirty (30)~~ 15 days of receipt of an application whether the application is complete and approved or deficient and disapproved. ~~Such~~ The notice, if it indicates a deficiency, will state the specific information which is required to complete the application. If the application is deficient, the applicant may be scheduled for the next examination upon completion of the application.
- (e) Abandonment - If an applicant fails to complete his ~~or her~~ an application within one year after ~~it has been filed of the date of receipt by the Office of Tank Tester Licensing, or fails to take the examination within a one year period after becoming eligible therefore the date of receipt of the application by the Office of Tank Tester Licensing,~~ the application shall be considered ~~to be~~ abandoned. An application submitted after the abandonment of a ~~former~~ previous application shall be treated as a new application and shall be required to meet all of the requirements for an initial license.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

- (a) Content - The examination shall include: (1) general principles of tank and ~~pipeline testing~~ piping tests; (2) basic understanding of the mathematics relating to tank and piping integrity testing; (3) knowledge of the regulations and laws governing underground storage tanks; and (4) proper safety procedures.
- (b) Frequency - A minimum of two examination shall be given each year.
- (c) Dishonest conduct during examination - An applicant for licensure as a tank tester who engages in dishonest conduct during the examination shall have his or her examination confiscated immediately and shall not have his or her examination graded and shall be denied the opportunity to take the examination ~~at its next administration~~ for one year.
- (d) Confidentiality of examination questions - The Office of Tank Tester Licensing examination questions are confidential. Any person who removes all or part of ~~any an~~ examination from the examination room or area, or who conveys or exposes all or part of ~~any an~~ examination to any other person may be disqualified as a candidate for the license ~~for which the applicant applies~~ licensure for one year and may be liable civilly and in addition may be subject to administrative sanction under ~~Section 2773 of Article 5~~.
- (e) Notification of results - Within ~~60~~ 30 calendar days of the examination, the Division shall notify

applicants in writing whether they have passed or failed the examination.

- (f) Failure to pass examination; reexamination fee - If an An applicant who fails to pass an initial examination, ~~he or she~~ shall be eligible for a subsequent examination upon ~~both~~ paying the reexamination fee as prescribed by Article 7 and filing a completed application for reexamination within the time limits and conditions relating to applications for initial examinations provided in Section 2761.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2763 Issuance of license, renewal and reinstatement

- (a) Issuance - Except as otherwise specified in these regulations, Upon the successful completion of the application and examination process and payment of the fees prescribed by these regulations, the Division shall issue a tank tester license within 30 calendar days of receipt of the license fee.

~~(1) Prior to January 1, 1990, all licenses shall be issued no later than December 15, 1989.~~

~~(2) On and after January 1, 1990, all licenses shall be issued within 30 days of receipt of the license fee.~~

- (b) Renewal of licenses; notice; payment of civil penalties-

- ~~(1) Except as otherwise prescribed in these regulations, the Division shall issue a renewal license upon submittal of a completed renewal application and payment of the renewal fee.~~
- ~~(2) Each license renewal application shall state the licensee's full name, business and residence address, the name under which the licensee does business and his/her tank tester license number and shall be accompanied by two color photographs as prescribed by Section 2731 of Article 1 and the renewal fee as prescribed by Section 2800 of Article 8.~~
- ~~(3) Every license under these regulations shall be placed on a cyclical renewal, and shall expire three years following the date of issuance or assigned renewal date. In order to implement cyclical renewal, the population of licensees shall be divided into 36 equal groups; the licenses of those in each group to expire on the last day of each successive month. The Division may extend or shorten the first term of licensure and prorate the required license fee in order to implement this cyclical renewal.~~
- ~~(4) The Division shall send to each licensee a notice of renewal at least 90 calendar days prior to the expiration of each unexpired license.~~
- ~~(5) At least 60 days prior to the expiration, a licensee who desires to renew his or her license shall forward to the Division a~~

~~completed renewal application and renewal fee
as prescribed in these regulations.~~

~~(6) The Division shall notify licensees in writing
within thirty (30) days of receipt of a license
renewal application whether the renewal
application is complete and approved or deficient
and disapproved. Such notice, if it indicates a
deficiency, shall state the specific information
which is required to complete the renewal
application. A renewal license shall be issued
within thirty (30) days from the date of written
notification that the renewal application is
complete and approved.~~

~~(7) Neither the renewal license nor the reinstatement
shall be issued until any and all penalties
assessed have been paid or otherwise resolved in
accordance with these regulations.~~

(1) The Division shall send to each licensee a notice
of renewal at least 60 calendar days prior to the
expiration of each license.

(2) At least 30 calendar days prior to the
expiration, a licensee who desires to renew his
or her license shall send to the Division a
completed renewal application as prescribed by
section 2763(b)(2), and renewal fee as prescribed
by Article 7.

(3) Each license renewal application shall include
the licensee's full name, business and residence
address and telephone number, license number, and
the name under which the licensee does business.

Each application shall include two color photographs as prescribed by section 2731 and the renewal fee as prescribed by Article 7.

- (4) The Division shall notify licensees in writing within 15 calendar days of receipt of a license renewal application if the renewal application is deficient. The notice shall state the specific information which is required to complete the renewal application.
- (5) Except as otherwise prescribed by these regulations, the Division shall issue a license renewal within 30 calendar days of receipt of a completed renewal application.
- (6) The license renewal shall not be issued until any and all penalties assessed have been paid or disciplinary actions have been completed in accordance with these regulations.
- (c) Notification of expiration; cessation of display - Upon the expiration of any license issued under these regulations, the holder of the license shall cease to carry or display the license and shall cease to conduct the business of a licensed tank tester.
- (d) Reinstatement following expiration - An expired license may be reinstated within ~~three years~~ one year of the date of expiration upon the filing of a reinstatement application and payment of the renewal fee and the reinstatement fee as prescribed by Article 7. The Division shall notify licensees in writing within ~~thirty~~ (30) calendar days of receipt

of a reinstatement application ~~whether if the~~
application is ~~complete and approved or~~ deficient
and ~~disapproved~~. Such ~~The~~ notice, ~~if it indicates a~~
~~deficiency~~, shall state the specific information
which is required to complete the application. A
reinstated license shall be issued within ~~thirty~~
~~(30)~~ calendar days from the date of ~~written~~
~~notification that the reinstatement application is~~
~~complete and approved~~ receipt of the a complete
reinstatement application.

The reinstated license shall not be issued until any
and all penalties assessed have been paid or until
disciplinary actions have been completed. A license
which has been expired for more than ~~three years~~ one
year may not be reinstated; ~~the.~~ The applicant must
file ~~for an initial application~~, pass the
examination, and meet all of the requirements for an
initial license, ~~including passage of the~~
~~examination.~~

- (e) Each license reinstatement application shall state
the licensee's full name, business and residence
address and telephone numbers, license number, and
the name under which the licensee does business and
~~his/her tank tester license number and~~ Each
application shall be accompanied by include two
color photographs as prescribed by ~~Section 2731 of~~
~~Article 1~~ and the reinstatement and renewal fees as
prescribed by ~~Section 2800 of Article 8~~ Article 7.
- (f) Suspended license; expiration and renewal;
restrictions on activities - A suspended tank tester
license is subject to expiration and shall be
renewed as provided in this ~~Article~~, but however,

renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the licensed activity business of a licensed tank tester, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

- (g) ~~Revoked license; expiration; reinstatement after expiration; fee~~ - A revoked license may not be renewed or reinstated.
- (h) Assignment - A license issued under these regulations is not assignable.
- (i) License denial; grounds - A license may be denied by the Division pursuant to the ~~conditions contained in provisions of Section 2773 of Article 5.~~
- (j) Replacement of lost, stolen or destroyed ~~peeket cards licenses~~ - A ~~peeket-card license~~ license which has been lost, stolen or destroyed may be replaced by the Division. A licensee may request a duplicate ~~peeket-card license~~ license by submitting a written statement of facts describing the loss, theft, or destruction of the ~~card license~~ license and by submitting two color photographs as prescribed by ~~Section 2731 of Article 1~~ and the duplicate license fee prescribed by ~~Section 2800 of Article 8~~ Article 7.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

ARTICLE 5. CONDUCT OF BUSINESS AND PROHIBITED ACTS

2770 Notice of change of address

A licensee shall notify the Division of any change of his or her residence address and business addresses of record and telephone numbers within 30 calendar days after such the change.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2770.5 Name and license number on tank test reports

A licensee who personally conducts a tank or piping integrity test shall complete and sign the resulting report in accordance with the provisions of section 2643(g) of Article 4 of Chapter 16 and shall include his or her license number on the report.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2771 Liability of licensee; employee records; completion of training for testing method used

- (a) A licensee shall at all times be responsible for the actions conduct and performance of those ~~who are~~ under the licensee's direct and personal supervision ~~of the licensee~~ when ~~such~~ those persons under supervision are acting within the course and scope of their employment as tank testers, ~~with regard to actions performed in violation of these regulations or Section 25284.4 of the Health and Safety Code.~~

(b) Each licensee shall maintain a record of the following information for each underground storage tank ~~for which he or she rendered service personally tested:~~

- (1) name, address and telephone number of the tank owner or operator, physical address of the underground storage tank, and dates when the tank or piping test service performed was provided;
- (2) all information and data collected and reports prepared in the course of performing service as a tank tester, including but not limited to raw data, calculations and reports-;
- (3) a list of ~~individuals~~ persons working under the direct and personal supervision of the licensee including ~~dates of service~~ when the tank or piping test was performed.

(c) Each licensee shall have completed training from a manufacturer for each test method used prior to using any test method. The licensee shall submit to the Office of Tank Tester Licensing, a certificate of completion or other proof of training issued by the manufacturer, before using the test method or equipment.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2772 Record retention period

Records, including those described in Section 2771, shall be retained for a period of at least three years. These records shall be available for inspection by the Division and its agents upon demand, and copies thereof, and information pertaining thereto or therein, shall be submitted to the Division upon demand.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2773 Grounds for disciplinary action denial, suspension, probation or revocation of license and civil liability.

A tank tester may be liable civilly and in addition may be subject to administrative sanctions including, but not limited to, notices of warning, letters of caution, fine assessments, denial, suspension, probation, or revocation of his or her license in accordance with ~~Subsections~~ sections 25284.4(g) and (h) of the Health and Safety Code for performing or causing another to perform, any of the following ~~actions~~ acts:

- (a) willfully or negligently violating, ~~or~~ causing, or allowing the violation of ~~these regulations~~ the provisions of Chapters 16 and 17;
- (b) willfully or negligently failing to exercise direct and personal ~~control~~ supervision over an unlicensed employee, associate, assistant, or agent during any phase of tank or piping integrity testing;
- (c) without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, or agent to use any tank or piping test method or equipment which is demonstrated to be

~~unsafe or unreliable for tank integrity testing~~
which does not meet the requirements of section 2643
of Chapter 16;

- (d) ~~submitting false or misleading information, on in~~
connection with an application for license or
engaging in fraudulent or dishonest activity during
the course of an examination for license licensure;
- (e) ~~using fraud or deception in the course of doing~~
business as a tank tester;
- (f) ~~failing to use reasonable care or good judgment~~
~~while performing tank integrity tests follow~~
standard procedures set by the manufacturer of the
equipment used and which were included in evaluating
the equipment for conformance with EPA standards.
- (g) ~~failing to maintain competence in approved tank~~
~~integrity testing procedures the test method and~~
procedures for which the tank tester received
training and which the tank tester uses to test
tanks and associated piping;
- (h) ~~failing to use proper tests tank and piping test~~
methods or testing equipment that has been
determined to meet performance standards set by
federal regulations in 40 CFR 280.40, 280.43, and
280.44 to conduct tank integrity tests;
- (i) ~~failing to notify the Division within 30 calendar~~
days of any change of residence or business address
and telephone numbers or address of record;

- (j) failing to include the licensee's name, address, and license number in any advertisement as defined in Section 2731 of Article 1;
- (k) aiding or abetting an unlicensed tank tester or assigning ~~his or her~~ a license as defined in Section 2731 of Article 1;
- (l) failing to possess, while performing services, a license which shall be presented upon demand to the tank owner or operator, the Division or its agents or any state or local official;
- (m) failing to keep and maintain complete and correct records as described in Sections 2771 and 2772;
- (n) violating Section 17500 of the Business and Professions Code;
- ~~(o) willfully or negligently misreading or misinterpreting test results;~~
- ~~(p)~~ (o) failing to have successfully completed training from a manufacturer of tank or piping test equipment in the test method being used by the licensee prior to using the test method; and
- (p) using tank or piping test equipment and procedures which do not meet the requirements of Article 4 of Chapter 16.

Authority: H&SC 25284.4
Reference: H&SC 25284.4, B&PC 17500

ARTICLE 6. DISCIPLINARY PROCEEDINGS
APPEALS REGARDING DISCIPLINARY ACTION

~~2790~~ 2780 Disciplinary Proceedings

A tank tester may be liable civilly in accordance with Subsection section 25284.4(h) of the Health and Safety Code and, in addition, may be subject to administrative sanctions pursuant to subsection section 25284.4(g) of the Health and Safety Code for performing, allowing, or causing another to perform, any of the actions acts specified in Section 2773 of Article 5.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

ARTICLE 7. PROTESTS AND APPEALS

~~2780~~ 2781 Action by Division

~~An aggrieved party~~ A licensee or applicant for licensure (hereafter referred to as "appellant" for the purposes of this Article) who wishes to ~~pretest~~ appeal any discretionary decision made by the Office of Tank Tester Licensing or any violation of the time periods set forth in Article 4 may ask for a review ~~of the decision~~ by the Division Chief. ~~Such pretest~~ The request for review must be in writing and must be postmarked mailed to the ~~Division Chief~~ within 30 calendar days of the announcement of examination results or notification of an Office of Tank Tester Licensing decision or violation of the time periods set forth in Article 4. ~~All requests~~ The request for review must be accompanied by all evidence the ~~aggrieved party~~ appellant wishes to be considered by the Division Chief and by the State Water Board in any subsequent review.

The Division Chief shall review the all evidence and the decision of the Office of Tank Tester Licensing ~~decision~~ and shall affirm, rescind, or modify the decision. The Division Chief's determination shall be in-writing, labeled as the Division Chief's determination and shall inform the ~~aggrieved party~~ appellant that the determination is final and conclusive unless, within 30 calendar days from the date of receipt of the determination, the ~~aggrieved party petitions the Board for review~~ appellant requests a review by the State Water Board.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

~~2781~~ 2782 Petition Requests for review by the State Water Board

(a) A petition request for review by the State Water Board shall contain but not be limited to the following:

- (1) name and address of ~~petitioner~~ the appellant;
- (2) a copy of the Office of Tank Tester Licensing decision and the Division Chief's determination which the State Water Board is requested to review;

- (3) ~~the date when petitioner received the Division Chief's determination;~~
- (4) the manner in which the petitioner is aggrieved;
- (5) (3) the specific action ~~by which the appellant wishes the State Water Board which the petitioner requests to take;~~
- (6) (4) a copy of the evidence presented to the Division Chief prior to the determination;
- (b) The ~~petitioner~~ appellant may make a written request for a hearing before the State Water Board for the purpose of presenting evidence not provided to and ~~considered by the Division Chief.~~

Any request to present evidence not provided to the Division Chief must include a statement as to why ~~such~~ the evidence was not presented to the Division Chief for review.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

~~2782~~ 2783 ~~Defective petitions~~ Deficient requests for review

Upon receipt by the State Water Board of a petition request for review which does not comply with the provisions of Section 2781 2782, the State Water Board shall notify the ~~petitioner~~ appellant in what respect the petition request for review is defective deficient and the time within which an amended petition request for review may be filed. If a properly amended petition request is not received by the State Water Board within the time allowed, the petition request shall be dismissed denied unless good cause is shown for an extension of time.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

~~2783~~ 2784 Recommendation by ~~the Chief of the Division~~ Chief

A copy of the petition request for review and any accompanying evidence and statement(s) shall be sent to the Division Chief. The Division Chief shall file a response to the request with the State Water Board within 20 calendar days of the receipt of the petition request for review.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

~~2784~~ 2785 Action by the State Water Board

(a) The State Water Board may:

- (1) Refuse to review the Division Chief's determination if the ~~petition is untimely~~

request for review is not filed in accordance with the provisions of sections 2782 and 2783.

(2) After review of the petition and the response of the Division Chief:

(A) deny the petition request upon a finding that the Division Chief's determination was proper; or

(B) set aside or modify the Division Chief's determination; or

(C) direct the Division to take appropriate other specified action.

(b) Before taking final action, the State Water Board may, ~~in its discretion,~~ hold a hearing for the purpose of oral argument or receipt of additional evidence or both; or, the State Water Board may provide for an informal meeting between the petitioner appellant, the Division staff, and a member of the State Water Board and such other persons as the State Water Board deems ~~suitable for the purpose of attempting to resolve the dispute between the petitioner and the Division~~ necessary for arbitration.

(c) If a hearing is held, the State Water Board shall give reasonable notice to the petitioner appellant, the Division, and other persons as the State Water Board deems appropriate, of the time and place of the hearing and ~~of~~ the issues to be considered. The hearing shall be conducted in a manner deemed most

suitable for securing all relevant evidence without unnecessary delay.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

ARTICLE 8 7. REVENUE

2800 Fees

- (a) The nonrefundable application fee for an initial tank tester license is one hundred dollars (\$100).
- (b) The examination fee for a tank tester license is two hundred dollars (\$200).
- (c) The license fee for a tank tester shall not exceed six hundred dollars (\$600).
- (d) The nonrefundable reexamination fee is two hundred dollars (\$200).
- (e) The license renewal fee for a tank tester shall not exceed six hundred dollars (\$600).
- (f) The license reinstatement fee is two hundred dollars (\$200).
- (g) The fee for a duplicate license, to replace a lost, stolen or destroyed license is ten dollars (\$10).
- (h) The fee for the cost of a certified copy of any license or a certification of licensure is five dollars (\$5).

- (i) The fee for processing a dishonored check is fifteen dollars (\$15).

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2801 Copies of laws, rules, etc.; disposition

The Office of Tank Tester Licensing shall furnish one copy of the licensing law, rules, regulations, manuals, or guides to any applicant or licensee or other interested parties without charge.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2802 Refund of fees

Application and license fees are not refundable.
Examination fees may be refunded only if the application is ~~denied or~~ rejected by the Office of Tank Tester Licensing, the Division Chief or the State Water Board.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

STATE WATER RESOURCES CONTROL BOARD**DIVISION OF CLEAN WATER PROGRAMS**

2014 T STREET, SUITE 130

P.O. BOX 944212

SACRAMENTO, CA 94244-2120

**INITIAL STATEMENT OF REASONS
TANK TESTER LICENSING REGULATIONS**

Nonsubstantive changes: Wherever the term "state board" or "board" is used in existing regulations, the terms have been changed to "State Water Board". This change is made to comply with State Water Resources Control Board policy.

There are numerous editorial changes and changes made for clarity. They are not itemized because they are nonsubstantive.

ARTICLE 1. GENERAL PROVISIONSSpecific Purpose

Section 2731(b) - This amendment adds videotape recording to the definition of advertisement.

Factual Basis

The existing definition of "advertisement" includes various types of written communication and radio and television advertising. Since the regulations became effective in 1989, some large tank testing equipment manufacturers have produced video tapes to promote their products. These tapes are used by tank testing companies to promote their services. Adding "video tape recording" to the definition of advertising would complete the list of advertising methods which should include the tank testers' license numbers.

Specific Purpose

Section 2731(c) - The definition of "applicant" is amended.

Factual Basis

The current definition of "applicant" is incomplete. It states only that an applicant is someone who is seeking a license. For the purposes of the Office of Tank Tester Licensing, an applicant is a person who seeks a license by filing an application.

Specific Purpose

Section 2731(d)(6) - The requirement to include hands-on use of testing equipment is removed.

Factual Basis

Because the experience requirements have been changed to require applicants to have six months training in the field in addition to the course of study, the course no longer needs to include hands-on training. The applicant gets that training in the six months in the field.

Specific Purpose

Section 2731(d)(6) (new) - This amendment requires the course of study to include a written examination.

Factual Basis

The addition of subsection (7) would require that a written examination be given as part of the course of study to determine the student's knowledge and understanding of the material presented during the course. Without the examination, no determination could be made of the students' grasp of the subject matter. Currently, there is one course of study provider in California and that provider already administers an examination.

Specific Purpose

Section 2731(d)(8)(A) - This amendment would require course of study provider applicants to submit copies of the instruction manuals they propose to use.

Factual Basis

Existing language requires potential providers of courses of study to submit a syllabus or outline of the course they propose to offer. Information in a syllabus or outline is not sufficient to allow the Office of Tank Tester Licensing to determine whether the material to be covered is adequate.

By requiring course of study providers to submit the instruction manuals they propose to use, the Office of Tank Tester Licensing will be able to determine whether all necessary information is covered.

Specific Purpose

Section 2731(d)(8)(B) and (C) - These amendments require instructors to submit to the Office of Tank Tester Licensing, copies of all handout material to be given to students and all videotapes to be used in class.

Factual Basis

By requiring instructors to submit handout material and copies of videotapes, the Office of Tank Tester Licensing will be able to determine whether the material and videotapes are appropriate.

Specific Purpose

Section 2731(d)(8)(D), (E), (F), and (G) - These new subdivisions require course of study providers to supply the Office of Tank Tester Licensing with necessary information regarding the identity of all instructors, location of the classroom and tanks to be used, and a copy of the written examination.

Factual Basis

This information is necessary for the Office of Tank Tester Licensing to review the qualifications of instructors and to locate classroom and tank sites for inspection.

Specific Purpose and Factual Basis

Section 2731(g) - The definition of "declarant" is added to identify the person who attests to an applicant's experience qualifications.

Specific Purpose and Factual Basis

Section 2631(h) - This amendment is made to clarify that both the supervisor and the tank tester must be physically located at the work site. It is a clarification and not a new requirement.

Specific Purpose

Section 2731(j)(5)(6)(7) - The definition of "fraud" or "deception" is expanded to include filing false test reports, providing results for tests which were not conducted, and accepting compensation for false test results. "Willfully or negligently misreading or misinterpreting test data" is moved to this section from section 2773(o).

Factual Basis

Since the tank tester regulations were adopted in March 1989, staff has investigated complaints involving the kinds of fraud listed above. Identifying them specifically in regulations clarifies the meaning of fraud and deception for use in disciplinary proceedings.

Specific Purpose and Factual Basis

Section 2731(n) - The definition of "manufacturer" is amended to

remove reference to "selling" equipment. Many manufacturers do not market their product directly, but contract for this service.

Specific Purpose

Section 2731(p) - This amendment clarifies the intent of the language regarding qualifying experience and the period of time in which it was gained.

Factual Basis

Experience gained before the licensing program began on January 1, 1990 could not have been under the supervision of a licensee (because there were no licensees). If the Office of Tank Tester Licensing receives an application from someone who was in the business before January 1, 1990, unlicensed experience is acceptable. After that date, experience must be under the direction of a licensee.

Specific Purpose and Factual Basis

Section 2731(q) - The definition of "tank integrity test" is amended to refer to an existing definition in Chapter 16. It is not necessary to redefine "tank integrity test" in this Chapter.

Specific Purpose

Section 2731(r) - The definition of "tank tester" is amended to include the testing of piping associated with tanks.

Factual Basis

The requirements to test piping are the same as those for testing tanks. The definition of underground storage tank in the statutes includes associated piping. Adding "or associated piping" to the definition clarifies the fact that tank testers also test piping.

ARTICLE 2. ADMINISTRATION

Specific Purpose

Section 2740 - This section has been reworded for clarity and the provision for making enforcement action information available is moved to new section 2741. The following amendments are also made:

- the option for a tank tester to have his or her telephone number removed from the list of licensees is removed.

- instead of providing local agencies with an updated list of licensees after every examination, this proposed amendment would provide the list at least twice per year. The list will be provided to other interested parties upon request.
- the requirement to pay a fee to receive the list of licensees is removed.

Factual Basis

- the purpose of publishing a list of licensees is to assist local agencies to locate those tank testers working in their jurisdictions. It is also to assist tank owners in finding technicians to test their tanks. A business telephone number is public information and is essential to this list. To date, no tank tester has requested his or her name be removed from the list.
- providing an updated list after every examination administration is impractical. The examination is given approximately five times per year, and there are usually no more than 15-20 people taking the examination. An updated list twice per year is sufficient.
- the cost to update, print, and mail lists of licensees does not warrant charging a fee for the service.

Specific Purpose and Factual Basis

Section 2741 - This new section separates enforcement information from licensing information in section 2740. This new language specifies that information regarding disciplinary action will be provided to local agencies as available, and to interested parties upon request.

ARTICLE 3. APPLICATION OF REGULATIONS

Specific Purpose and Factual Basis

Section 2750 - The amendment to this section refers the reader to section 2611 of Chapter 16 for the definition of tank integrity test. This is consistent with the definition in section 2731(q). Reference to January 1, 1990 is removed because it is no longer necessary.

ARTICLE 4. LICENSING .

Specific Purpose

Section 2760 - The language in this section is amended to implement amendments to section 25284.4 of the Health and Safety Code and, in subdivision (b), to eliminate reference to persons applying for a license in 1989. Reference to manufacturer training is moved from subdivision (a) to the introductory paragraph.

Factual Basis

In 1991, statutes were amended by AB 1359 which changed the experience requirements for tank tester license applicants. As of January 1, 1992, applicants who qualify for licensure by taking a course of study, must also have six month's experience in addition to the course of study.

Specific Purpose and Factual Basis

Section 2761(a)(2) - Language in this subdivision is amended to identify the person who verifies an applicant's experience as a "declarant." Reference to the course of study is deleted because the course of study instructor, and not the declarant, verifies course of study completion.

Specific Purpose

Section 2761(b) - Existing language requires applicants to have their applications postmarked by the final filing date listed in the "examination information and schedule." This amendment requires applications to be postmarked no later than three weeks before the examination.

Factual Basis

Three weeks is adequate time for the Office of Tank Tester Licensing to review applications and determine the eligibility of applicants. Establishing a specific timeframe for filing applications removes any ambiguity.

Specific Purpose and Factual Basis

Section 2761(d) - The amount of time the Division has in which to notify applicants of deficiencies in their applications is reduced from 30 to 15 days. Historically, the Office of Tank Tester Licensing can get back to an applicant within a few days of receipt of the application.

Specific Purpose and Factual Basis

Section 2761(e) - The amendments made to this subdivision are for clarification. A "filing" date may be ambiguous; a "date of receipt" is specific.

Specific Purpose and Factual Basis

Section 2762(a)(2) - See Factual Basis for the definition of tank tester for the reason "piping" was added to the language in this section.

Specific Purpose

Section 2762(c) and (d) - These amendments change the timeframe within which an applicant may take an examination after having engaged in dishonest conduct during an examination. The applicant is prohibited from taking the examination for one year instead of being prohibited from the next examination. Language is added to clarify that the applicant has the right to appeal the disqualification in accordance with the provisions of Article 6. Language is removed from subdivision (d) regarding civil penalties.

Factual Basis

Because examinations are administered frequently throughout the year, prohibiting an applicant from taking the next examination may only mean a matter of a few months before the applicant could sit for another examination. Appropriate discipline is to disqualify the applicant for one year. Language regarding civil penalties is removed because the State Water Board cannot take such action against someone who is not licensed under its purview.

Specific Purpose and Factual Basis

Section 2762(e) - This amendment reduces the number of days from 60 to 30 in which the Division must notify applicants of their test results. The Office of Tank Tester Licensing has consistently released those results within two weeks of the examination date since the program began in 1990. Allowing 30 days in regulations is adequate.

Specific Purpose and Factual Basis

Section 2763(a) - Reference to licenses issuance prior to January 1, 1990 is deleted in subdivision (1) and the requirement to issue in 30 days is moved to subdivision (a).

Specific Purpose and Factual Basis

Section 2763(b) - Existing language in this subsection is reorganized according to the order in which events occur. Additionally, the following changes are made:

- the division must send renewal notices to licensees within 60 days of expiration instead of 90 days.
- licensees must postmark their renewal applications 30 days before expiration instead of 60 days.
- the Office of Tank Tester Licensing must notify applicants of any deficiencies in their applications within 15 days instead of 30 days.

Specific Purpose

Section 2763(c) - This amendment specifically prohibits a person from displaying an expired license or conducting the business of a licensed tank tester if the license has expired.

Factual Basis

Section 25284.4 of the Health and Safety Code requires tank testers to be licensed. Being licensed means having a valid tank tester license. If the license is expired it is not valid, and the tank tester may no longer operate. Tank testers have been known to present expired licenses to local agency inspectors in an attempt to prove licensure. If an inspector doesn't happen to see the expiration date, the tester may be allowed to perform the work. Prohibiting the display of expired licenses adds a measure of protection against such practices.

Specific Purpose

Section 2763(d) - One amendment deletes the division's requirement to notify licensees if their reinstatement applications are complete. (The other amendments are nonsubstantive.)

Factual Basis

It is not necessary to notify applicants when their applications are complete. Notification is in the form of a reinstated application. Since the program began in January 1991, approximately six licensees have been required to reinstate their licenses and the Office of Tank Tester Licensing issued the reinstated licenses within a few days of receipt of the completed applications and fees. To send notification that the application is complete is unnecessary paperwork and postage.

Specific Purpose and Factual Basis

Section 2763(e) - This amendment requires applicants for reinstatement to provide the Office of Tank Tester Licensing with their telephone numbers and license number. Requiring telephone numbers is standard in licensing programs. Requiring the license number removes any possible confusion about the identity of the applicant.

Specific Purpose and Factual Basis

Section 2763(j) - This amendment removes reference to "pocket cards." When the original regulations were drafted in 1989, it was thought that because licenses would be small and were intended to be carried in a wallet, in a pocket, people would refer to them as "pocket cards." This has not been the case; they have always been referred to as "licenses."

ARTICLE 5. CONDUCT OF BUSINESS AND PROHIBITED ACTS

Specific Purpose

Section 2770 - This amendment requires tank testers to notify the division of any change in a business address or home or business telephone numbers within 30 days of the change. Existing language requires information only about changes in home addresses.

Factual Basis

In order to ensure that the Office of Tank Tester Licensing is able to contact its licensees at work or at home regarding licensing or disciplinary matters, the Office must be made aware of changes in location and telephone numbers.

Specific Purpose

Section 2770.1 - This new section requires tank testers who personally conduct tank or piping tests to sign the resulting reports and put their license numbers on the reports.

Factual Basis

Local agencies who review tank test reports for accuracy must be able to identify the person responsible for collecting and interpreting the data. Tank testers must take responsibility for their work by signing their reports and identifying themselves by license number.

Specific Purpose

Section 2771 - This amendment requires the licensee who supervises an unlicensed tank tester to sign the resulting

report.

Factual Basis

Section 25284.4 of the Health and Safety Code authorizes an unlicensed person to conduct tank tests if he or she is directly and personally supervised by a licensee. The licensee must take responsibility for the work of the person under supervision. Signing the report as the supervisor ensures that the unlicensed person was supervised and that a licensee is taking responsibility.

Specific Purpose

Section 2771(b)(1) - Existing language requires licensees to maintain certain records regarding their tank tests. Proposed amendments add the requirement to identify the physical location of the tanks they test.

Factual Basis

The address of the tank owner or operator is not necessarily the physical address of the property where the tank is located. The local agency inspector may need to make an on-site visit to determine if a tank was properly tested.

Specific Purpose

Section 2771(c) - Existing language requires tank testers to have completed training from the manufacturer of each type of test equipment used before the equipment is used. This amendment requires the tester to provide the Office of Tank Tester Licensing with a copy of the manufacturer's certificate before using the equipment in the field.

Factual Basis

Local agencies who review tank test reports refer to their lists of licensees to determine whether the testers have been certified in the use of the equipment they report using. Local agencies frequently review reports showing equipment used that does not appear next to the tester's name on the list. This requires the local agency to call the Office to see if the tester reported being qualified to use the additional equipment. If the licensee has not notified the Office of a change in or addition to his or her equipment, the local agency will not know whether the tests performed by that licensee are valid. This requires a telephone call to the tank tester and a delay in approving the report. Adding the requirement to supply the Office with a copy of a training certificate or other proof that training is complete will help the local agencies and the Office of Tank Tester Licensing run their underground storage tank programs more

efficiently. It will also provide a measure of confidence that testers are familiar with the equipment they are using and are able to conduct valid tests.

Specific Purpose

Section 2773 - This amendment clarifies the types of disciplinary action which could be taken against a licensee for violations of the regulations.

Factual Basis

Existing language specifies that the disciplinary action includes denial, suspension, probation, or revocation of a license. This amendment adds notices of warning, letters of caution, and fine assessments as measures of disciplinary action. Some violations may warrant cautions or warnings rather than the more severe measures of suspension, probation, or revocation. "Fine assessments" are a form of civil liability already mentioned in existing language, but which the reader may not understand as fine assessments. Adding the term clarifies the meaning of civil liability.

Specific Purpose

Section 2773(c) - This amendment specifies that testers may not use equipment which does not meet the requirements of section 2643 of Chapter 16 of the regulations. That section specifies that equipment must meet certain performance standards as determined by a third party using the Environmental Protection Agency's "EPA Standard Test Procedure" or equivalent.

Specific Purpose

Section 2773(d) - Existing language prohibits submission of false or misleading information on applications for licensure. This amendment changes "on" to "in connection with."

Factual Basis

Many applications are accompanied by supporting documentation. It is important to specify in regulations that these documents may not be false or misleading.

"Dishonest" is added to the language because the intent is to prohibit cheating. Cheating is fraudulent and dishonest.

Specific Purpose

Section 2773(f) - This amendment adds language which specifically prohibits licensees from failing to follow procedures required by the equipment manufacturer.

Factual Basis

Unless the tester conducts tank tests according to procedures established by the manufacturer, the tests may be improperly conducted and the results invalid.

Specific Purpose and Factual Basis

Section 2773(g) - Language in this subsection was reworded for clarity.

Specific Purpose

Section 2773(h) - This subsection is amended to identify what "proper" equipment is.

Factual Basis

Since these regulations were adopted in 1989, EPA amended their regulations to require tank testing equipment to meet performance standards set by the new regulations. The language in this subsection is amended to refer to federal requirements.

Specific Purpose and Factual Basis

Section 2773(o) - The prohibition against willfully or negligently misreading or misinterpreting test results is moved to the definition of fraud or deception.

Specific Purpose

Section 2781 -

1. The term, "aggrieved party" is replaced with "appellant."
2. Existing language requires appeals to be mailed to the Office of Tank Tester Licensing within 30 days of receipt of notification of an Office of Tank Tester Licensing decision.

Factual Basis

1. Although existing regulations contain no definition of "aggrieved party," the term implies that a person has suffered a specific loss or injury through some act, or failure to act, by the division. The use of the term incorrectly implies that the division has infringed upon an individual's rights. As the term is used in Article 6, an aggrieved party is someone who appeals decisions made by the division and is not someone who has been treated unjustly (suffered a loss or injury because of division action or inaction). "Appellant" more accurately describes one who appeals.

2. This amendment clarifies that the appeals must be postmarked within 30 calendar days of an examination or receipt of a disciplinary notice.

Specific Purpose

Section 2782(a)(3) - This subdivision is deleted because the information is unnecessary. The Office will know when the appellant received the determination by the date on the certificate of certified mailing returned by the post office.

ARTICLE 6. APPEALS REGARDING DISCIPLINARY ACTION

Specific Purpose and Factual Basis

Section 2781 - One of the amendments to this section requires appeals to be "postmarked" rather than "mailed" because a postmark is proof of mailing. The other amendments are for clarification only and do not change requirements.

Specific Purpose and Factual Basis

Section 2782(a)(3) and (4) (existing) - These subdivisions are deleted because the information is unnecessary.

NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 7-90)

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER	PREVIOUS REGULATORY ACTION NUMBER
	243-0601-02			

For use by Office of Administrative Law (OAL) only

<p>1993 JUN -1 PM 10 50</p> <p>OFFICE OF ADMINISTRATIVE LAW</p> <p>RECEIVED FOR FILING</p> <p>PUBLICATION DATE</p> <p>JUN 01 '93</p> <p>JUN 11 '93</p> <p>Office of Administrative Law</p>		<p>REGULATIONS</p>	
AGENCY		AGENCY FILE NUMBER (if any)	

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
Tank Tester Licensing Regulations		23	2730	June 11, 1993
3. NOTICE TYPE		4. AGENCY CONTACT PERSON		TELEPHONE NUMBER
<input checked="" type="checkbox"/> Notice re Proposed <input type="checkbox"/> Regulatory Action <input type="checkbox"/> Other		Barbara Wightman		227-4318
OAL USE ONLY		ACTION ON PROPOSED NOTICE		NOTICE REGISTER NUMBER
ONLY		<input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)	
SECTIONS AFFECTED	ADOPT
	AMEND
	REPEAL
TITLE(S)	Sections 2730 through 2802
23	
2. TYPE OF FILING	
<input checked="" type="checkbox"/> Regular Rulemaking (Gov. Code, § 11346) <input type="checkbox"/> Resubmittal <input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100) <input type="checkbox"/> Emergency (Gov. Code, § 11346.1(b)) <input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.4 - 11346.8 prior to, or within 120 days of, the effective date of the regulations listed above. <input type="checkbox"/> Print Only <input type="checkbox"/> Other (specify)	
3. DATE(S) OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)	
4. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code § 11346.2)	
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> Effective other (Specify)	
5. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY	
<input type="checkbox"/> Department of Finance (Form STD. 399) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input type="checkbox"/> Other (Specify)	
6. CONTACT PERSON	TELEPHONE NUMBER

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE	DATE
Walt Pettit	5-28-93
TYPED NAME AND TITLE OF SIGNATORY	
Walt Pettit, Executive Officer	

f. Initial Statement of Reasons

1994

INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND TANK TESTERS
(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

STATE WATER RESOURCES CONTROL BOARD**DIVISION OF CLEAN WATER PROGRAMS**

2014 T STREET, SUITE 130

P.O. BOX 944212

SACRAMENTO, CA 94244-2120

**INITIAL STATEMENT OF REASONS
TANK TESTER LICENSING REGULATIONS**

Nonsubstantive changes: Wherever the term "state board" or "board" is used in existing regulations, the terms have been changed to "State Water Board". This change is made to comply with State Water Resources Control Board policy.

There are numerous editorial changes and changes made for clarity. They are not itemized because they are nonsubstantive.

ARTICLE 1. GENERAL PROVISIONS**Specific Purpose**

Section 2731(b) - This amendment adds videotape recording to the definition of advertisement.

Factual Basis

The existing definition of "advertisement" includes various types of written communication and radio and television advertising. Since the regulations became effective in 1989, some large tank testing equipment manufacturers have produced video tapes to promote their products. These tapes are used by tank testing companies to promote their services. Adding "video tape recording" to the definition of advertising would complete the list of advertising methods which should include the tank testers' license numbers.

Specific Purpose

Section 2731(c) - The definition of "applicant" is amended.

Factual Basis

The current definition of "applicant" is incomplete. It states only that an applicant is someone who is seeking a license. For the purposes of the Office of Tank Tester Licensing, an applicant is a person who seeks a license by filing an application.

Specific Purpose

Section 2731(d)(6) - The requirement to include hands-on use of testing equipment is removed.

Factual Basis

Because the experience requirements have been changed to require applicants to have six months training in the field in addition to the course of study, the course no longer needs to include hands-on training. The applicant gets that training in the six months in the field.

Specific Purpose

Section 2731(d)(6) (new) - This amendment requires the course of study to include a written examination.

Factual Basis

The addition of subsection (7) would require that a written examination be given as part of the course of study to determine the student's knowledge and understanding of the material presented during the course. Without the examination, no determination could be made of the students' grasp of the subject matter. Currently, there is one course of study provider in California and that provider already administers an examination.

Specific Purpose

Section 2731(d)(8)(A) - This amendment would require course of study provider applicants to submit copies of the instruction manuals they propose to use.

Factual Basis

Existing language requires potential providers of courses of study to submit a syllabus or outline of the course they propose to offer. Information in a syllabus or outline is not sufficient to allow the Office of Tank Tester Licensing to determine whether the material to be covered is adequate.

By requiring course of study providers to submit the instruction manuals they propose to use, the Office of Tank Tester Licensing will be able to determine whether all necessary information is covered.

Specific Purpose

Section 2731(d)(8)(B) and (C) - These amendments require instructors to submit to the Office of Tank Tester Licensing, copies of all handout material to be given to students and all videotapes to be used in class.

Factual Basis

By requiring instructors to submit handout material and copies of videotapes, the Office of Tank Tester Licensing will be able to determine whether the material and videotapes are appropriate.

Specific Purpose

Section 2731(d)(8)(D),(E),(F), and (G) - These new subdivisions require course of study providers to supply the Office of Tank Tester Licensing with necessary information regarding the identity of all instructors, location of the classroom and tanks to be used, and a copy of the written examination.

Factual Basis

This information is necessary for the Office of Tank Tester Licensing to review the qualifications of instructors and to locate classroom and tank sites for inspection.

Specific Purpose and Factual Basis

Section 2731(g) - The definition of "declarant" is added to identify the person who attests to an applicant's experience qualifications.

Specific Purpose and Factual Basis

Section 2631(h) - This amendment is made to clarify that both the supervisor and the tank tester must be physically located at the work site. It is a clarification and not a new requirement.

Specific Purpose

Section 2731(j)(5)(6)(7) - The definition of "fraud" or "deception" is expanded to include filing false test reports, providing results for tests which were not conducted, and accepting compensation for false test results. "Willfully or negligently misreading or misinterpreting test data" is moved to this section from section 2773(o).

Factual Basis

Since the tank tester regulations were adopted in March 1989, staff has investigated complaints involving the kinds of fraud listed above. Identifying them specifically in regulations clarifies the meaning of fraud and deception for use in disciplinary proceedings.

Specific Purpose and Factual Basis

Section 2731(n) - The definition of "manufacturer" is amended to remove reference to "selling" equipment. Many manufacturers do not market their product directly, but contract for this service.

Specific Purpose

Section 2731(p) - This amendment clarifies the intent of the language regarding qualifying experience and the period of time in which it was gained.

Factual Basis

Experience gained before the licensing program began on January 1, 1990 could not have been under the supervision of a licensee (because there were no licensees). If the Office of Tank Tester Licensing receives an application from someone who was in the business before January 1, 1990, unlicensed experience is acceptable. After that date, experience must be under the direction of a licensee.

Specific Purpose and Factual Basis

Section 2731(q) - The definition of "tank integrity test" is amended to refer to an existing definition in Chapter 16. It is not necessary to redefine "tank integrity test" in this Chapter.

Specific Purpose

Section 2731(r) - The definition of "tank tester" is amended to include the testing of piping associated with tanks.

Factual Basis

The requirements to test piping are the same as those for testing tanks. The definition of underground storage tank in the statutes includes associated piping. Adding "or associated piping" to the definition clarifies the fact that tank testers also test piping.

ARTICLE 2. ADMINISTRATION

Specific Purpose

Section 2740 - This section has been reworded for clarity and the provision for making enforcement action information available is moved to new section 2741. The following amendments are also made:

- the option for a tank tester to have his or her telephone number removed from the list of licensees is removed.
- instead of providing local agencies with an updated list of licensees after every examination, this proposed amendment would provide the list at least twice per year. The list will be provided to other interested parties upon request.
- the requirement to pay a fee to receive the list of licensees is removed.

Factual Basis

the purpose of publishing a list of licensees is to assist local agencies to locate those tank testers working in their jurisdictions. It is also to assist tank owners in finding technicians to test their tanks. A business telephone number is public information and is essential to this list. To date, no tank tester has requested his or her name be removed from the list.

providing an updated list after every examination administration is impractical. The examination is given approximately five times per year, and there are usually no more than 15-20 people taking the examination. An updated list twice per year is sufficient.

the cost to update, print, and mail lists of licensees does not warrant charging a fee for the service.

Specific Purpose and Factual Basis

Section 2741 - This new section separates enforcement information from licensing information in section 2740. This new language specifies that information regarding disciplinary action will be provided to local agencies as available, and to interested parties upon request.

ARTICLE 3. APPLICATION OF REGULATIONS

Specific Purpose and Factual Basis

Section 2750 - The amendment to this section refers the reader to section 2611 of Chapter 16 for the definition of tank integrity test. This is consistent with the definition in section 2731(g).

Reference to January 1, 1990 is removed because it is no longer necessary.

ARTICLE 4. LICENSING

Specific Purpose

Section 2760 - The language in this section is amended to implement amendments to section 25284.4 of the Health and Safety Code and, in subdivision (b), to eliminate reference to persons applying for a license in 1989. Reference to manufacturer training is moved from subdivision (a) to the introductory paragraph.

Factual Basis

In 1991, statutes were amended by AB 1359 which changed the experience

requirements for tank tester license applicants. As of January 1, 1992, applicants who qualify for licensure by taking a course of study, must also have six month's experience in addition to the course of study.

Specific Purpose and Factual Basis

Section 2761(a)(2) - Language in this subdivision is amended to identify the person who verifies an applicant's experience as a "declarant." Reference to the course of study is deleted because the course of study instructor, and not the declarant, verifies course of study completion.

Specific Purpose

Section 2761(b) - Existing language requires applicants to have their applications postmarked by the final filing date listed in the "examination information and schedule." This amendment requires applications to be postmarked no later than three weeks before the examination.

Factual Basis

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Specific Purpose and Factual Basis

Section 2761(d) - The amount of time the Division has in which to notify applicants of deficiencies in their applications is reduced from 30 to 15 days. Historically, the Office of Tank Tester Licensing can get back to an applicant within a few days of receipt of the application.

Specific Purpose and Factual Basis

Section 2761(e) - The amendments made to this subdivision are for clarification. A "filing" date may be ambiguous; a "date of receipt" is specific.

Specific Purpose and Factual Basis

Section 2762(a)(2) - See Factual Basis for the definition of tank tester for the reason "piping" was added to the language in this section.

Specific Purpose

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that the applicant has the right to appeal the disqualification in accordance with the provisions of

Article 6. Language is removed from subdivision (d) regarding civil penalties.

Factual Basis

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Specific Purpose and Factual Basis

Section 2762(e) - This amendment reduces the number of days from 60 to 30 in which the Division must notify applicants of their test results. The Office of Tank Tester Licensing has consistently released those results within two weeks of the examination date since the program began in 1990. Allowing 30 days in regulations is adequate.

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Specific Purpose

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Factual Basis

It is not necessary to notify applicants when their applications are complete. Notification is in the form of a reinstated application. Since the program began in January 1991, approximately six licensees have been required to reinstate their licenses and the Office of Tank Tester Licensing issued the reinstated licenses within a few days of receipt of the completed applications and fees. To send notification that the application is complete is unnecessary paperwork and postage.

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Specific Purpose and Factual Basis

Section 2763(j) - This amendment removes reference to "pocket cards." When the original regulations were drafted in 1989, it was thought that because licenses would be small and were intended to be carried in a wallet, in a pocket, people would refer to them as "pocket cards." This has not been the case; they have always been referred to as "licenses."

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of the change. Existing language requires information only about changes in home addresses.

Factual Basis

In order to ensure that the Office of Tank Tester Licensing is able to contact its licensees at work or at home regarding licensing or disciplinary matters, the Office must be made aware of changes in location and telephone numbers.

Specific Purpose

Section 2770.1 - This new section requires tank testers who personally conduct tank or piping tests to sign the resulting reports and put their license numbers on the reports.

Factual Basis

Local agencies who review tank test reports for accuracy must be able to identify the person responsible for collecting and interpreting the data. Tank testers must take responsibility for their work by signing their reports and identifying themselves by license number.

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Specific Purpose

Section 2771(b)(1) - Existing language requires licensees to maintain certain records regarding their tank tests. Proposed amendments add the requirement to identify the physical location of the tanks they test.

Factual Basis

The address of the tank owner or operator is not necessarily the physical address of the property where the tank is located. The local agency inspector may need to make an on-site visit to determine if a tank was properly tested.

Specific Purpose

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Factual Basis

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Specific Purpose

Section 2773 - This amendment clarifies the types of disciplinary action which could be taken against a licensee for violations of the regulations.

Factual Basis

Existing language specifies that the disciplinary action includes denial, suspension, probation, or revocation of a license. This amendment adds notices of warning, letters of caution, and fine assessments as measures of disciplinary action. Some violations may warrant cautions or warnings rather than the more severe measures of suspension, probation, or revocation. "Fine assessments" are a form of civil liability already mentioned in existing language, but which the reader may not understand as fine assessments. Adding the term clarifies the meaning of civil liability.

Specific Purpose

Section 2773(c) - This amendment specifies that testers may not use equipment which does not meet the requirements of section 2643 of Chapter 16 of the regulations. That section specifies that equipment must meet certain performance standards as determined by a third party using the Environmental Protection Agency's "EPA Standard Test Procedure" or equivalent.

Specific Purpose

Section 2773(d) - Existing language prohibits submission of false or misleading information on applications for licensure. This amendment changes "on" to "in connection with."

Factual Basis

Many applications are accompanied by supporting documentation. It is important to specify in regulations that these documents may not be false or misleading.

"Dishonest" is added to the language because the intent is to prohibit cheating. Cheating is fraudulent and dishonest.

Specific Purpose

Section 2773(f) - This amendment adds language which specifically prohibits licensees from failing to follow procedures required by the equipment manufacturer.

Factual Basis

Unless the tester conducts tank tests according to procedures established by the manufacturer, the tests may be improperly conducted and the results invalid.

Specific Purpose and Factual Basis

Section 2773(g) - Language in this subsection was reworded for clarity.

Specific Purpose

Section 2773(h) - This subsection is amended to identify what "proper" equipment is.

Factual Basis

Since these regulations were adopted in 1989, EPA amended their regulations to require tank testing equipment to meet performance standards set by the new regulations. The language in this subsection is amended to refer to federal requirements.

Specific Purpose and Factual Basis

Section 2773(o) - The prohibition against willfully or negligently misreading or misinterpreting test results is moved to the definition of fraud or deception.

Specific Purpose

Section 2781 -

1. The term, "aggrieved party" is replaced with "appellant."
2. Existing language requires appeals to be mailed to the Office of Tank Tester Licensing within 30 days of receipt of notification of an Office of Tank Tester Licensing decision.

Factual Basis

1. Although existing regulations contain no definition of "aggrieved party," the term implies that a person has suffered a specific loss or injury through some act, or failure to act, by the division. The use of the term incorrectly implies that the division has infringed upon an individual's rights. As the term is used in Article 6, an aggrieved party is someone who appeals decisions made by the division and is not someone who has been treated unjustly (suffered a loss or injury because of division action or inaction). "Appellant" more accurately describes one who appeals.
2. This amendment clarifies that the appeals must be postmarked within 30 calendar days of an examination or receipt of a disciplinary notice.

Specific Purpose

Section 2782(a)(3) - This subdivision is deleted because the information is unnecessary. The Office will know when the appellant received the determination by the date on the certificate of certified mailing returned by the post office.

ARTICLE 6. APPEALS REGARDING DISCIPLINARY ACTION

Specific Purpose and Factual Basis

Section 2781 - One of the amendments to this section requires appeals to be "postmarked" rather than "mailed" because a postmark is proof of mailing. The other amendments are for clarification only and do not change requirements.

Specific Purpose and Factual Basis

Section 2782(a)(3) and (4) (existing) - These subdivisions are deleted because the information is unnecessary.

g. Transmittal memo to
Environmental Affairs Agency


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INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND TANK TESTERS
(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

Memorandum

To: James M. Strock
Secretary for Environmental Protection
555 Capitol Mall, Suite 235
Sacramento, CA 95814

Date: JUN 1 1993


Walt Pettit
Executive Director
From: State Water Resources Control Board
901 P Street, Sacramento, CA 95814

Subject: AMENDMENTS TO TITLE 23, CALIFORNIA CODE OF REGULATIONS (CCR) - TANK
TESTER LICENSING REGULATIONS

The State Water Resources Control Board (State Water Board) is proposing to amend its regulations for underground storage tank testers. The Office of Tank Tester Licensing, Clean Water Programs is responsible for licensing and regulating tank testers.

Assembly Bill 1359 (statutes of 1991, Cortese) amended section 25284.4 of the Health and Safety Code. This section sets forth, among other things, the experience requirements for those who wish to apply for tank tester licenses. The main purpose of this rulemaking exercise is to implement the amendments to the Health and Safety Code.

Other proposed amendments include:

- removing the requirement for "hands-on" field training as part of a Course of Study. This training is now required as part of an applicant's experience rather than during a training course.
- expanding the definition of "fraud" and "deception".
- requiring tank testers to sign their tank test reports and include their license numbers on their reports
- identifying levels of disciplinary measures to be taken for violations of the regulations and statutes.

Attached is a copy of the proposed amended regulations in strikeout and underline format. Also attached are the Initial Statement of Reasons and the Notice of Proposed Rulemaking. The State Water Board intends to begin the 45-day comment period on June 11, 1993.

If you have any questions, please call Harry Schueller, Chief, Division of Clean Water Programs at 227-4428. The staff person working on these regulations is Barbara Wightman who can be reached at 227-4318.

h. Statement of Mailing Notice

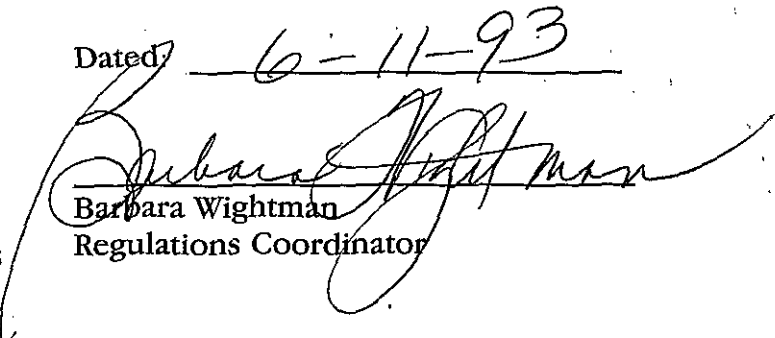
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STATEMENT OF MAILING NOTICE
(pursuant to Section 86 of Title 1
of the California Code of Regulations)

The State Water Resources Control Board has complied with the provisions of Government Code Section 11346.4, subdivisions (a)(1) through (4), regarding the mailing of the notice of proposed regulatory action. The notice was mailed on June 11, 1993.

Dated: 6-11-93


Barbara Wightman
Regulations Coordinator

II. Comment letters received during 45-day public comment period

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(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

TULARE COUNTY

DEPARTMENT OF HEALTH SERVICES



Ronald W. Probasco
Director

Division of
Environmental Health
County Civic Center
Visalia, CA 93291
(209) 733-6441

July 1, 1993

Mike McDonald
Underground Storage Tank Program
State Water Resources Control Board
Division of Clean Water Programs
P.O. Box 944212
Sacramento, CA 94244-2120

Re: Comments to Notice of Proposed Rulemaking - Tank Tester
Licensing Regulations

Dear Mr. McDonald:

On behalf of the Tulare County Division of Environmental Health, I would like to take this opportunity to comment on the proposed changes to the regulations regarding the licensure of underground tank testers.

The new Section 2741 of the Regulations is a welcome addition in that it requires local agencies be given information on disciplinary actions taken by the Board as they become available.

Section 2771 requires a licensee who supervises an unlicensed tank tester to sign the resulting report. This will ensure that the licensee will take responsibility for the report, but it does not necessarily ensure that the licensee physically supervises the unlicensed person which is clearly the intent of the law.

Additionally, Section 2780 states a tester may be liable civilly in accordance with Section 25284.4(h) of the Health and Safety Code. Section 25284.4(h) goes on to state that the Board may impose civil liability for a violation. It would be very useful if this section could be expanded to grant the Board or local agency the ability to impose civil liabilities. Currently, the local agency may proceed against a party for fraudulent or unfair business practices; however, it would be much less troublesome to prosecute if the local agency were able to proceed against a tester under a specific section in the Health and Safety Code.

Should you have any concerns regarding these comments, please contact me at your earliest convenience.

Sincerely,

A handwritten signature in dark ink, appearing to read "DWF", is written over the typed name "David W. Fishel".

David W. Fishel
Deputy Director of Health Services
Division of Environmental Health

DWF:sm

TANKNOLOGYTECHNOLOGY
AND TESTERS

Date: July 21, 1993

To: Barbara Waightman

From: Troy Wilkerson
Regional Vice President

Subject: Proposed Rulemaking:
Tank Tester Licensing Regulations

Tanknology has reviewed the proposed changes to regulations governing tank testers. We believe the changes proposed will increase the quality of tank testing in the State of California, therefore we support the proposed changes.

We hope that California will consider working with other states in the region and encourage reciprocal license cooperation with these states. The reciprocity program works very well between Washington and Oregon. We believe California should also get involved in reciprocity since great interest has been expressed by other states, and California could help in increasing tank tester skills with them.

By initiating a reciprocity program California could influence tank tester licensing throughout the region, set standards for basic required skills, and serve to make licensing more cost effective for tank testing companies as well as individual testers.

Tanknology supports regulation requiring a more highly skilled tank tester, and is committed to cooperating with any endeavor to serve this purpose. If there is any way that Tanknology can assist the State in this regard, we would be very enthusiastic to provide our assistance.

III. Statement regarding public hearing

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(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

**STATEMENT REGARDING A HEARING ON THE
PROPOSED AMENDMENTS TO THE REGULATIONS**

In the Notice of Proposed Rulemaking, all interested parties were invited to request a hearing on the proposed changes to the Tank Tester Licensing Regulations.

No request was made, and no hearing was held.

IV. State Water Board workshop and meeting documents

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a. Workshop agenda and item and
draft resolutions (missing)

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(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

b. State Water Board meeting
agenda item

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(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

STATE WATER RESOURCES CONTROL BOARD MEETING
SACRAMENTO, CALIFORNIA
NOVEMBER 18, 1993

ITEM:

SUBJECT: PROPOSED AMENDMENTS TO TITLE 23, CHAPTER 17, CALIFORNIA CODE OF REGULATIONS (CCR) UNDERGROUND STORAGE TANK TESTER REGULATIONS

DISCUSSION: Tank tester regulations were originally adopted by the State Water Board in 1989 in conformance with Chapter 6.7 of the Health and Safety Code. Title 23, Chapter 17, Articles 1 through 8 cover regulatory requirements for the operation of a tank tester licensing program and regulation of licensed tank testers.

Article 4 is amended to implement Section 25284.4 of the Health and Safety Code which was amended in 1992 by AB 1359 (Chapter 708, Statutes of 1991, Cortese). That statute amended experience requirements for tank tester applicants.

Other amendments included removing the "hands-on" portion of the Course of Study to coincide with new experience requirements in Article 4; redefining "fraud" to include filing false tank test reports and accepting compensation for a false or favorable tank test report; requiring license numbers on reports; and clarifying disciplinary options.

Because the above amendments were necessary, staff has also taken the opportunity to clarify language in other articles without changing requirements.

On June 11, 1993, the proposed amendments were published and interested parties were given 45 days in which to comment. Staff received two comment letters: one letter gave full endorsement to the regulations from the largest tank testing company in California; the other made several suggestions. These suggestions were not accepted by staff. A public hearing was neither requested nor held.

POLICY ISSUE: Should the State Water Board adopt the amended Underground Storage Tank regulations as proposed?

FISCAL IMPACT: None

REGIONAL BOARD IMPACT: None

Providing more flexible options to the current regulatory product level requirement (after tank filling) for conducting annual and monthly tank tests.

Allowing use of bladder systems as an option for upgrading single-walled motor vehicle fuel tanks.

Requiring the tank owner to apply for temporary or permanent tank closure within ninety (90) days after use of the tank ceases. Actual closure must be completed within a reasonable period of time, as determined by the local agency.

Exempting hydraulic lift tanks and adding an exemption for tanks located in vaults or basements.

Extending the deadline for obtaining third party approval for tank components from July 1, 1992 to January 1, 1995.

Providing flexibility in testing gravity-flow and suction piping.

Requiring motor vehicle fuel to be delivered to tanks via a drop tube which provides a vertical opening for accurate stick readings (Federal requirement).

Authorizing the use of a new monitoring method, Statistical Inventory Reconciliation (SIR) for motor vehicle fuel tanks.

Requiring striker plates to be installed by December 22, 1998 in tanks that are monitored using manual dipstick readings. This requirement can be met by attaching a striker plate to the bottom of the drop tube without the need to enter the tank.

POLICY
ISSUE: Should the State Water Board adopt the amended UST regulations as proposed?

FISCAL
IMPACT: The fiscal impact of adopting these regulations is provided for by budgeted resources for the UST program.

REGIONAL
BOARD
IMPACT: None

STAFF
RECOMMEN-
DATION: That the State UST regulations be amended as proposed and the Executive Director be directed to submit the amended regulations to OAL for their administrative review.

Policy Review
Legal Review
Fiscal Review

[Handwritten signatures]
DMG
SW

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 93-

AMENDING OF REGULATIONS GOVERNING UNDERGROUND STORAGE TANK
TESTERS - TO BE CODIFIED IN CHAPTER 17 OF DIVISION 3 OF TITLE 23
OF THE CALIFORNIA CODE OF REGULATIONS (23 CCR SECTIONS 2730-2802)

WHEREAS:

1. Chapter 6.7 of the Health and Safety Code was added to the Code by Chapter 1046 of the Statutes of 1983 (AB 1362, Sher).
2. Section 25284.4 of the Health and Safety Code was amended by Assembly Bill 1413 (Chapter 1372, Statutes of 1987, Cortese) to require underground storage tank testers to be licensed by the State Water Board.
3. Section 25284.4 of the Health and Safety Code was amended by Assembly Bill 1359 (Chapter 708, Statutes of 1991, Cortese) to change experience requirements for underground storage tank testers.
4. Section 25284.4 of the Health and Safety Code requires the State Water Board to adopt regulations necessary to implement the statute.
5. Staff has prepared proposed amendments to the regulations to implement amendments to Section 25284.4 of the Health and Safety Code.

THEREFORE BE IT RESOLVED:

That the State Water Board approves amendment of the proposed regulations governing underground storage tank testers as incorporated by reference to this resolution.

CERTIFICATION

The undersigned, Administrative Assistant to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 18, 1993.

Maureen Marché
Administrative Assistant to the Board

D
R
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F
T

c. Resolution adopting the
regulations

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INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND TANK TESTERS
(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

STATE WATER RESOURCES CONTROL BOARD
RESOLUTION NO. 93-113

AMENDING OF REGULATIONS GOVERNING UNDERGROUND STORAGE TANK
TESTERS - TO BE CODIFIED IN CHAPTER 17 OF DIVISION 3 OF TITLE 23
OF THE CALIFORNIA CODE OF REGULATIONS (23 CCR SECTIONS 2730-2802)

WHEREAS:

1. Chapter 6.7 of the Health and Safety Code was added to the Code by Chapter 1046 of the Statutes of 1983 (AB 1362, Sher).
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3. Section 25284.4 of the Health and Safety Code was amended by Assembly Bill 1359 (Chapter 708, Statutes of 1991, Cortese) to change experience requirements for underground storage tank testers.
4. Section 25284.4 of the Health and Safety Code requires the State Water Board to adopt regulations necessary to implement the statute.
5. Staff has prepared proposed amendments to the regulations to implement amendments to Section 25284.4 of the Health and Safety Code.

THEREFORE BE IT RESOLVED:

That the State Water Board approves amendment of the proposed regulations governing underground storage tank testers as incorporated by reference to this resolution.

CERTIFICATION

The undersigned, Administrative Assistant to the Board does hereby certify that the foregoing is a full, true, and correct copy of a resolution duly and regularly adopted at a meeting of the State Water Resources Control Board held on November 18, 1993.


Maureen Marché
Administrative Assistant to the Board

d. Text of regulations adopted by
the State Water Board

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(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

**Title 23, Division 3, Chapter 17,
Tank Tester Licensing Regulations**

ARTICLE 1. GENERAL PROVISIONS

2730 Purpose

The State Water Board is vested with all the functions and duties relating to the administration of the Tank Tester License Program (§section 25284.4 Health and Safety Code). Specifically, the purpose of the Tank Tester License Program is to protect the environment and public health and safety by establishing minimum qualifications for those who test underground storage tanks and associated piping and by establishing a licensing program for underground storage tank testers.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2731 Definitions

- (a) "Address of record" means the address at which the licensee wishes to be contacted by the State Water Board. The address of record is public information.
- (b) "Advertisement" means any written or printed communication, for the purpose of soliciting, describing, or promoting the licensee's business including a brochure, letter, pamphlet, newspaper, periodical, or publication or other writing. Advertisement also includes a radio, television, or similar airwaves transmission, or videotape recording which solicits or promotes the licensee's business. It does not include:
 - (1) a free directory listing which does not allow space for a license number;
 - (2) any printing or writing on buildings or vehicles where the purpose of the printing is identification;
 - (3) any printing, ~~or writing, or other communication, memoranda, or any other writing~~ used in the ordinary course of business where the purpose of the ~~writing~~ communication is other than solicitation or promotion of business.
- (c) "Applicant" means any person ~~seeking a tank tester license~~ who files an application for a tank tester license in accordance with the provisions of section 2761.

(d) "Approved course of study" means a course of study approved by the Division after being recommended by a committee appointed by the Division and which includes, but is not limited to:

- (1) General principles of tank and pipeline piping testing.
- (2) Basic understanding of the mathematics relating to tank testing.
- (3) Understanding of test procedures, principles, and equipment.
- (4) Knowledge of the regulations and laws governing the regulation of pertaining to underground storage tanks.
- (5) Proper safety procedures.
- (6) Hands-on use of tank testing equipment.

Written examination to be administered to each student to determine the student's knowledge and understanding of the course of study material.

Anyone who desires to provide an approved course of study shall furnish the Division with the following material:

- (A) A syllabus or outline of the course of study. An instruction manual proposed for use by the instructor which covers all material and information to be given to students and which is in accordance with the provisions of subdivisions (d)(1)-(7) of this section.
- (B) Information demonstrating that the course of study includes items listed in (d)(1)(6), above. Copies of all handout material to be given to students.
- (C) A description of the method or methods used by the provider to determine whether the enrollee has successfully completed the course of study. Copies of all video tapes to be used for instructional purposes.
- (D) Names, addresses, telephone numbers, and related work experience of each instructor and information as to the subject matter to be taught by each instructor.
- (E) Physical location of classroom instruction.
- (F) Physical location of underground storage tanks to be used for hands-on training.

(G) A copy of the written examination to be administered to students to determine their knowledge and understanding of the course of study material.

- (e) ~~"Assignment" means to permit an employee or agent in his or her own name to advertise, engage clients, furnish reports, or present bills to clients, or in any manner whatsoever to conduct business for which a license is required under these regulations.~~ giving permission to another to use one's license for the purpose of conducting the business of a tank tester, including advertising, billing, and furnishing reports to clients.
- ~~(f) "Board" as used in these regulations means the five members of the State Water Resources Control Board.~~
- ~~(g) (f)~~ "Declarant" means a person who verifies an applicant's tank testing experience by declaring personal knowledge of the experience in writing, under penalty of perjury.
- (g) "Direct and personal supervision" means the watchful care and inspection of the conduct and performance of a tank tester by a licensee while the licensee is and the tank tester are physically located at the work site.
- (h) "Division" means the Division of the State Water Board in which the Office of Tank Tester Licensing is located.
- (i) "Fraud" or "deception" includes but is not limited to:
- (1) knowingly making a false statement relating to the results of a tank integrity test or methods or information obtained in the course of employment;
 - (2) fabricating evidence;
 - (3) making a representation that any part of a tank integrity testing method or associated equipment is certified, approved, or in any way sanctioned by the State Water Board unless the method or equipment is actually certified, approved, or sanctioned by the State Water Board;
 - (4) failing to provide the services for which compensation has been received or which were agreed to by contract.
 - (5) filing a false tank test report with a state or local agency or tank owner or operator or providing test results for a tank or piping test which was not tested in whole or in part;

- (6) manipulating or causing the manipulation of test data including willfully or negligently misreading or misinterpreting test data;
- (7) accepting or agreeing to accept compensation for false test results.
- (j) "License" means a pocket card issued by the State Water Board which authorizes the licensee to conduct the business of an underground storage tank tester. The license shall ~~include~~ contain but not be limited to the following:
 - (1) a clear, full-face, one inch by one inch color photograph taken within one year immediately preceding the date of filing the application;
 - (2) the ~~make~~ first and last name of the licensee;
 - (3) the address of record of the licensee;
 - (4) the license number;
 - (5) the expiration date of the license.

The license is the property of the State Water Board.

- (k) "Licensee" means any person licensed under these regulations as a tank tester and who possesses a current and valid tank tester license issued by the State Water Board.
- (l) "Local agency" means the department, office, or other agency of a county or city designated pursuant to ~~S~~section 25283 of the Health and Safety Code.
- (m) "Manufacturer" means any business which produces ~~and sells~~ tank integrity testing equipment and which may provide training in the use of that equipment.
- (n) "Office of Tank Tester Licensing" means the unit of the Division which exercises the day-to-day functions of the ~~Division in the~~ Underground Tank Tester License Program.
- (o) "Qualifying Experience" means, ~~prior to January 1, 1990, experience in all aspects of tank integrity testing including setting up and operating equipment, collecting data and producing reports, after successfully completing training from a manufacturer in the appropriate test procedures. On and after January 1, 1990, "qualifying experience" means~~ experience in all aspects of tank integrity testing including personally setting up and operating tank integrity testing equipment, collecting data and producing reports under the direct and personal

supervision of a licensed tank tester, during which time training is successfully completed from a manufacturer in the appropriate test procedures.

- (p) "State Water Board" as used in these regulations means the five members of the State Water Resources Control Board.
- (p) (q) ~~"Tank integrity test" means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the Board.~~ tank integrity test as defined in section 2611 of Chapter 16 of the California Code of Regulations.
- (q) (r) ~~"Tank tester" means an individual~~ any person who performs tank integrity tests on underground storage tanks or associated piping.

Authority: H&SC 25284.4

Reference: H&SC 25284.4 and 25283

ARTICLE 2. ADMINISTRATION

2740 Record of Licensees and Enforcement Actions

~~The Office of Tank Tester Licensing shall maintain a current list of all licensed tank testers, including a record of enforcement actions taken. A roster shall be prepared showing names, address, and telephone numbers of record of all licensees and any enforcement actions completed. The telephone number may be omitted from the directory upon request of the licensee. One copy of the current roster of licensees shall be furnished to all local agencies after each examination administration. Additional copies of the roster of licensees shall be available to local agencies and the public on application to the Office of Tank Tester Licensing, at a price per copy sufficient to reimburse the Board for the cost of publication. A roster of enforcement actions completed will be available upon request at a price per copy sufficient to reimburse the Board for the cost of publication.~~ The Office of Tank Tester Licensing shall maintain a current roster of the names, addresses, telephone numbers, and license numbers of all licensed tank testers. The roster shall be furnished to local agencies at least twice per calendar year and shall be made available to local agencies and interested parties upon request.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2741 Record of Disciplinary Actions

Written information regarding disciplinary action taken against licensees shall be maintained by the Office of Tank Tester Licensing and information which meets the provisions of the Information Practices Act shall be furnished to local agencies as available and to interested parties upon request.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 3. APPLICATION OF REGULATIONS

2750 Necessity of License

~~On and after January 1, 1990, a~~ All tank integrity tests conducted within this state, as defined in Section 2734 2611 of Article 1 of Chapter 16 and conducted within this state, must be performed by or under the direct and personal supervision of a tank tester with a currently current and valid tank tester license issued pursuant to these regulations. No person shall be licensed unless ~~that person meets the requirements as specified in Article 4 of these regulations~~ have been met.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2751 Local Regulation; Ordinances

The provisions of these regulations shall not prevent the local authorities of any city, and/or county from: (a) requiring tank tester licensees to meet the requirements for and obtain a local business permit; (b) requiring licensees to register their name and file a copy of their State Water Board-issued tank tester license with the city and/or county. No fee, other than a fee for a local business permit, may be charged nor may any application be required by the city and/or county for that registration.

Authority: H&SC 25284.4

Reference: H&SC 25299.2

ARTICLE 4. LICENSING

2760 License Requirements

An applicant for a tank tester license shall have successfully completed training from the manufacturer of the tank and piping test equipment to be used and shall:

- (a) ~~demonstrate~~ have completed a minimum of either one year of verifiable qualifying experience testing at least ~~fifty~~ 50 underground storage tanks or have successfully completed both 6 months of qualifying experience during which at least 50 underground storage tanks were tested and an approved course of study as defined in ~~Section 2731 of Article 1 and training from a manufacturer in the test procedure to be used;~~
- ~~(b) for an applicant applying to take an examination during the 1989 calendar year, the applicant may document in the application specified in Subsection (c) that he or she will have completed the qualifying experience requirement prior to being-~~
issued a license on January 1, 1990. The Division may require the applicant to verify completion of qualifying experience prior to issuing a license;
- (e b) file with the Division a completed application as specified in ~~Section 2761;~~
- (d c) pay the nonrefundable application fee and the examination fee as specified in ~~Section 2800 of Article 8 7;~~
- (e d) provide two color photographs as specified described in ~~Section 2731 of Article 1;~~
- (f e) pass an examination administered under the direction of the Division as specified in ~~Section 2762; and~~
- (g f) pay the license fee as specified in ~~Section 2800 of Article 8 7~~ upon notification by the Division.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2761 Application for Licensure

- (a) Content - An application shall include but not be limited to:

- (1) the full name, residence address, and the ~~business and residence~~ address of record of the applicant and the ~~name under which the applicant does business~~ employer name and address if applicant is not self employed;
 - (2) a statement signed under penalty of perjury by a ~~person other than the applicant declarant~~ under penalty of perjury, verifying either the applicant's qualifying experience as specified in Section 2760(a) and ~~(b) or completion of a course of study approved by the Division~~;
 - (3) verification that the applicant was trained by the manufacturer in the principles and use of the equipment and method which the applicant used to gain his or her qualifying experience and the tank and piping test equipment and method the applicant intends to use after licensure;
 - (4) applicant's original signature signed under penalty of perjury and date the application was signed;
 - (5) the nonrefundable application fee and the examination fee as specified in ~~Section 2800 of Article 8~~ 7; and
 - (6) The Division may require the submission of any additional pertinent information, evidence, statements, or documents which would support the application for licensure.
- (b) Submittal - An application shall be postmarked ~~by the final filing date set forth in the examination information and schedule~~ no later than three weeks before the examination. Applications postmarked after the ~~final filing~~ that date may be held over and processed for the next scheduled examination.
- (c) Review - The Division shall review the application supporting documents to determine the applicant's eligibility for licensure.
- (d) Notice - The Division shall notify applicants in writing within ~~thirty (30)~~ 15 days of receipt of an application whether the application is complete and approved or deficient and ~~disapproved~~. Such ~~The~~ notice, if it indicates a deficiency, will state the specific information which is required to complete the application. If the application is deficient, the applicant may be scheduled for the next examination upon completion of the application.
- (e) Abandonment - If an applicant fails to complete ~~his or her an~~ an application within one year ~~after it has been filed~~ of the date of receipt by the Office of Tank Tester Licensing, or fails to take the examination within a one year

~~period after becoming eligible therefore~~ the date of receipt of the application by the Office of Tank Tester Licensing, the application shall be considered ~~to be~~ abandoned. An application submitted after the abandonment of a ~~former~~ previous application shall be treated as a new application and shall be required to meet all of the requirements for an initial license.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2762 Examination

- (a) Content - The examination shall include: (1) general principles of tank and ~~pipeline testing piping tests~~; (2) basic understanding of the mathematics relating to tank and piping integrity testing; (3) knowledge of the regulations and laws governing underground storage tanks; and (4) proper safety procedures.
- (b) Frequency - A minimum of two examination shall be given each year.
- (c) Dishonest conduct during examination - An applicant for licensure as a tank tester who engages in dishonest conduct during the examination shall have his or her examination confiscated immediately and shall not have his or her examination graded and shall be denied the opportunity to take the examination ~~at its next administration~~ for one year.
- (d) Confidentiality of examination questions - The Office of Tank Tester Licensing examination questions are confidential. Any person who removes all or part of ~~any an~~ an examination from the examination room or area, or who conveys or exposes all or part of ~~any an~~ an examination to any other person may be disqualified as a candidate for ~~the license for which the applicant applies licensure for one year and may be liable civilly~~ and in addition may be subject to administrative sanction under ~~Section 2773 of Article 5~~.
- (e) Notification of results - Within ~~60~~ 30 calendar days of the examination, the Division shall notify applicants in writing whether they have passed or failed the examination.
- (f) Failure to pass examination; reexamination fee - ~~If an~~ An applicant who fails to pass an initial examination, ~~he or she~~ shall be eligible for a subsequent examination upon ~~both~~ paying the reexamination fee as prescribed by Article 7 and filing a completed application for reexamination within the

time limits and conditions relating to applications for initial examinations provided in Section 2761.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2763 Issuance of license, renewal and reinstatement

- (a) Issuance - Except as otherwise specified in these regulations, Upon the successful completion of the application and examination process and payment of the fees prescribed by these regulations, the Division shall issue a tank tester license within 30 calendar days of receipt of the license fee.

~~(1) Prior to January 1, 1990, all licenses shall be issued no later than December 15, 1989.~~

~~(2) On and after January 1, 1990, all licenses shall be issued within 30 days of receipt of the license fee.~~

- (b) Renewal of licenses; notice; payment of civil penalties-

~~(1) Except as otherwise prescribed in these regulations, the Division shall issue a renewal license upon submittal of a completed renewal application and payment of the renewal fee.~~

~~(2) Each license renewal application shall state the licensee's full name, business and residence address, the name under which the licensee does business and his/her tank tester license number and shall be accompanied by two color photographs as prescribed by Section 2731 of Article 1 and the renewal fee as prescribed by Section 2800 of Article 8.~~

~~(3) Every license under these regulations shall be placed on a cyclical renewal, and shall expire three years following the date of issuance or assigned renewal date. In order to implement cyclical renewal, the population of licensees shall be divided into 36 equal groups; the licenses of those in each group to expire on the last day of each successive month. The Division may extend or shorten the first term of licensure and prorate the required license fee in order to implement this cyclical renewal.~~

- ~~(4) The Division shall send to each licensee a notice of renewal at least 90 calendar days prior to the expiration of each unexpired license.~~
- ~~(5) At least 60 days prior to the expiration, a licensee who desires to renew his or her license shall forward to the Division a completed renewal application and renewal fee as prescribed in these regulations.~~
- ~~(6) The Division shall notify licensees in writing within thirty (30) days of receipt of a license renewal application whether the renewal application is complete and approved or deficient and disapproved. Such notice, if it indicates a deficiency, shall state the specific information which is required to complete the renewal application. A renewal license shall be issued within thirty (30) days from the date of written notification that the renewal application is complete and approved.~~
- ~~(7) Neither the renewal license nor the reinstatement shall be issued until any and all penalties assessed have been paid or otherwise resolved in accordance with these regulations.~~
- (1) The Division shall send to each licensee a notice of renewal at least 60 calendar days prior to the expiration of each license.
- (2) At least 30 calendar days prior to the expiration, a licensee who desires to renew his or her license shall send to the Division a completed renewal application as prescribed by section 2763(b)(2), and renewal fee as prescribed by Article 7.
- (3) Each license renewal application shall include the licensee's full name, business and residence address and telephone number, license number, and the name under which the licensee does business. Each application shall include two color photographs as prescribed by section 2731 and the renewal fee as prescribed by Article 7.
- (4) The Division shall notify licensees in writing within 15 calendar days of receipt of a license renewal application if the renewal application is deficient. The notice shall state the specific information which is required to complete the renewal application.
- (5) Except as otherwise prescribed by these regulations, the Division shall issue a license renewal within 30 calendar days of receipt of a completed renewal application.

- (6) The license renewal shall not be issued until any and all penalties assessed have been paid or disciplinary actions have been completed in accordance with these regulations.
- (c) Notification of expiration; cessation of display - Upon the expiration of any license issued under these regulations, the holder of the license shall cease to carry or display the license and shall cease to conduct the business of a licensed tank tester.
- (d) Reinstatement following expiration - An expired license may be reinstated within ~~three years~~ one year of the date of expiration upon the filing of a reinstatement application and payment of the renewal fee and the reinstatement fee as prescribed by Article 7. The Division shall notify licensees in writing within ~~thirty (30)~~ calendar days of receipt of a reinstatement application ~~whether if the application is complete and approved or deficient and disapproved.~~ Such ~~The~~ notice, if it indicates a deficiency, shall state the specific information which is required to complete the application. A reinstated license shall be issued within ~~thirty (30)~~ calendar days from the date of ~~written notification that the reinstatement application is complete and approved~~ receipt of the a complete reinstatement application.

The reinstated license shall not be issued until any and all penalties assessed have been paid or until disciplinary actions have been completed. A license which has been expired for more than ~~three years~~ one year may not be reinstated; ~~the.~~ The applicant must file for an initial application, pass the examination, and meet all of the requirements for an initial license, including passage of the examination.

- (e) Each license reinstatement application shall state the licensee's full name, business and residence address and telephone numbers, license number, and the name under which the licensee does business and his/her tank tester license number and Each application shall be accompanied by include two color photographs as prescribed by ~~Section 2731 of Article 1 and the reinstatement and renewal fees as prescribed by Section 2800 of Article 8~~ Article 7.
- (f) Suspended license; expiration and renewal; restrictions on activities - A suspended tank tester license is subject to expiration and shall be renewed as provided in this Article; but however, renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the ~~licensed activity~~ business of a licensed tank

tester, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

- (g) ~~Revoked license; expiration; reinstatement after expiration; fee~~ - A revoked license may not be renewed or reinstated.
- (h) Assignment - A license issued under these regulations is not assignable.
- (i) License denial; grounds - A license may be denied by the Division pursuant to the ~~conditions contained in~~ provisions of Section 2773 of Article 5.
- (j) Replacement of lost, stolen or destroyed ~~pocket cards~~ licenses - A ~~pocket card~~ license which has been lost, stolen or destroyed may be replaced by the Division. A licensee may request a duplicate ~~pocket card~~ license by submitting a written statement of facts describing the loss, theft, or destruction of the ~~card~~ license and by submitting two color photographs as prescribed by ~~Section 2731 of Article 4~~ and the duplicate license fee prescribed by ~~Section 2800 of Article 8~~ Article 7.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 5. CONDUCT OF BUSINESS AND PROHIBITED ACTS

2770 Notice of change of address

A licensee shall notify the Division of any change of his or her residence ~~address~~ and business addresses of record and telephone numbers within 30 calendar days after such the change.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2770.5 Name and license number on tank test reports

A licensee who personally conducts a tank or piping integrity test shall complete and sign the resulting report in accordance with the provisions of section 2643(g) of Article 4 of Chapter 16 and shall include his or her license number on the report.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2771 Liability of licensee; employee records; completion of training for testing method used

- (a) A licensee shall at all times be responsible for the actions conduct and performance of those ~~who are~~ under the licensee's direct and personal supervision ~~of the licensee~~ when such those persons under supervision are acting within the course and scope of their employment as tank testers, ~~with regard to actions performed in violation of these regulations or Section 25284.4 of the Health and Safety Code.~~
- (b) Each licensee shall maintain a record of the following information for each underground storage tank ~~for which he or she rendered service personally tested:~~
- (1) name, address and telephone number of the tank owner or operator, physical address of the underground storage tank, and dates when the tank or piping test service performed was provided;
 - (2) all information and data collected and reports prepared in the course of performing service as a tank tester, including but not limited to raw data, calculations and reports;
 - (3) a list of ~~individuals~~ persons working under the direct and personal supervision of the licensee including dates ~~of service~~ when the tank or piping test was performed.
- (c) Each licensee shall have completed training from a manufacturer for each test method used prior to using any test method. The licensee shall submit to the Office of Tank Tester Licensing, a certificate of completion or other proof of training issued by the manufacturer, before using the test method or equipment.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2772 Record retention period

Records, including those described in §section 2771, shall be retained for a period of at least three years. These records shall be available for inspection by the Division and its agents upon demand, and copies thereof, and information pertaining thereto or therein, shall be submitted to the Division upon demand.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2773 Grounds for disciplinary action ~~denial, suspension, probation or revocation of license and civil liability.~~

A tank tester may be liable civilly and in addition may be subject to administrative sanctions including, but not limited to, notices of warning, letters of caution, fine assessments, denial, suspension, probation, or revocation of his or her license in accordance with Subsections sections 25284.4(g) and (h) of the Health and Safety Code for performing or causing another to perform, any of the following ~~actions~~ acts:

- (a) willfully or negligently violating, ~~or~~ causing, or allowing the violation of these regulations the provisions of Chapters 16 and 17;
- (b) willfully or negligently failing to exercise direct and personal ~~control~~ supervision over an unlicensed employee, associate, assistant, or agent during any phase of tank or piping integrity testing;
- (c) without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, or agent to use any tank or piping test method or equipment which is demonstrated to be unsafe or ~~unreliable for tank integrity testing~~ which does not meet the requirements of section 2643 of Chapter 16;
- (d) submitting false or misleading information ~~on~~ in connection with an application for license or engaging in fraudulent or dishonest activity during the course of an examination for ~~license~~ licensure;
- (e) using fraud or deception in the course of doing business as a tank tester,;
- (f) ~~failing to use reasonable care or good judgment while performing tank integrity tests~~ follow standard procedures set by the manufacturer of the equipment used and which were included in evaluating the equipment for conformance with EPA standards.
- (g) failing to maintain competence in ~~approved tank integrity testing procedures~~ the test method and procedures for which the tank tester received training and which the tank tester uses to test tanks and associated piping;
- (h) failing to use ~~proper tests~~ tank and piping test methods or testing equipment that has been determined to meet performance standards set by federal regulations in 40 CFR 280.40, 280.43, and 280.44 ~~to conduct tank integrity tests;~~
- (i) failing to notify the Division within 30 calendar days of any change of residence or business address and telephone numbers ~~or address of record;~~

- (j) failing to include the licensee's name, address, and license number in any advertisement as defined in ~~§~~section 2731 of ~~Article 1~~;
- (k) aiding or abetting an unlicensed tank tester or assigning ~~his or her~~ a license as defined in ~~§~~section 2731 of ~~Article 1~~;
- (l) failing to possess, while performing services, a license which shall be presented upon demand to the tank owner or operator, the Division or its agents or any state or local official;
- (m) failing to keep and maintain complete and correct records as described in ~~§~~sections 2771 and 2772;
- (n) violating ~~§~~section 17500 of the Business and Professions Code;
- ~~(o) willfully or negligently misreading or misinterpreting test results;~~
- ~~(p)~~ (o) failing to have successfully completed training from a manufacturer of tank or piping test equipment in the test method being used by the licensee prior to using the test method; and
- (p) using tank or piping test equipment and procedures which do not meet the requirements of Article 4 of Chapter 16.

Authority: H&SC 25284.4

Reference: H&SC 25284.4, B&PC 17500

ARTICLE 6. DISCIPLINARY PROCEEDINGS APPEALS REGARDING DISCIPLINARY ACTION

2790 2780 Disciplinary Proceedings

A tank tester may be liable civilly in accordance with ~~Subsection~~ section 25284.4(h) of the Health and Safety Code and, in addition, may be subject to administrative sanctions pursuant to ~~subsection~~ section 25284.4(g) of the Health and Safety Code for performing, allowing, or causing another to perform, any of the ~~actions~~ acts specified in ~~§~~section 2773 of ~~Article 5~~.

Authority: H&SC 25284.4

Reference: H&SC-25284.4

ARTICLE 7. PROTESTS AND APPEALS

2780 2781 Action by Division

~~An aggrieved party~~ A licensee or applicant for licensure (hereafter referred to as "appellant" for the purposes of this Article) who wishes to ~~protest~~ appeal any discretionary decision made by the Office of Tank Tester Licensing or any violation of the time periods set forth in Article 4 may ask for a review ~~of the decision~~ by the Division Chief. ~~Such protest~~ The request for review must be in writing and must be postmarked ~~mailed to the Division Chief~~ within 30 calendar days of the announcement of examination results or notification of an Office of Tank Tester Licensing decision or violation of the time periods set forth in Article 4. ~~All requests~~ The request for review must be accompanied by all evidence the ~~aggrieved party~~ appellant wishes to be considered by the Division Chief and by the State Water Board in any subsequent review.

The Division Chief shall review ~~the~~ all evidence and the decision of the Office of Tank Tester Licensing ~~decision~~ and shall affirm, rescind, or modify the decision. The Division Chief's determination shall be in writing, labeled as the Division Chief's determination and shall inform the ~~aggrieved party~~ appellant that the determination is final and conclusive unless, within 30 calendar days from the date of receipt of the determination, the ~~aggrieved party~~ petitioner ~~petitions the Board for review~~ requests a review by the State Water Board.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

~~2781~~ 2782 Petition Requests for review by the State Water Board

- (a) A ~~petition~~ request for review by the State Water Board shall contain but not be limited to the following:
- (1) name and address of ~~petitioner~~ the appellant;
 - (2) a copy of the Office of Tank Tester Licensing decision and the Division Chief's determination which the State Water Board is requested to review;
 - (3) ~~the date when petitioner received the Division Chief's determination~~;
 - ~~(4)~~ the manner in which the petitioner is aggrieved;

- (5) (4) the specific action by which the appellant wishes the State Water Board
which the petitioner requests to take;
- (6) (5) a copy of the evidence presented to the Division Chief prior to the
determination;
- (b) The ~~petitioner~~ appellant may make a written request for a hearing before the
State Water Board for the purpose of presenting evidence not provided to ~~and~~
~~considered by~~ the Division Chief.

Any request to present evidence not provided to the Division Chief must include
a statement as to why ~~such~~ the evidence was not presented to the Division Chief
for review.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

~~2782~~ 2783 ~~Defective petitions~~ Deficient requests for review

Upon receipt by the State Water Board of a petition request for review which does not
comply with the provisions of Section 2781 2782, the State Water Board shall notify
the ~~petitioner~~ appellant in what respect the petition request for review is ~~defective~~
deficient and the time within which an amended petition request for review may be
filed. If a properly amended petition request is not received by the State Water Board
within the time allowed, the petition request shall be ~~dismissed~~ denied unless good
cause is shown for an extension of time.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

~~2783~~ 2784 ~~Recommendation by the Chief of the Division~~ Chief

A copy of the petition request for review and any accompanying evidence and
statement(s) shall be sent to the Division Chief. The Division Chief shall file a
response to the request with the State Water Board within 20 calendar days of the
receipt of the petition request for review.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

~~2784~~ 2785 Action by the State Water Board

- (a) The State Water Board may:

- (1) Refuse to review the Division Chief's determination if the petition is untimely request for review is not filed in accordance with the provisions of sections 2782 and 2783.
- (2) After review of the petition and the response of the Division Chief:
 - (A) deny the petition request upon a finding that the Division Chief's determination was proper; or
 - (B) set aside or modify the Division Chief's determination; or
 - (C) direct the Division to take appropriate other specified action.
- (b) Before taking final action, the State Water Board may, ~~in its discretion,~~ hold a hearing for the purpose of oral argument or receipt of additional evidence or both; or, the State Water Board may provide for an informal meeting between the petitioner appellant, the Division staff, and a member of the State Water Board and such other persons as the State Water Board deems suitable for the purpose of attempting to resolve the dispute between the petitioner and the Division necessary for arbitration.
- (c) If a hearing is held, the State Water Board shall give reasonable notice to the petitioner appellant, the Division, and other persons as the State Water Board deems appropriate, of the time and place of the hearing and ~~of~~ the issues to be considered. The hearing shall be conducted in a manner deemed most suitable for securing all relevant evidence without unnecessary delay.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 8 7. REVENUE

2800 Fees

- (a) The nonrefundable application fee for an initial tank tester license is one hundred dollars (\$100).
- (b) The examination fee for a tank tester license is two hundred dollars (\$200).
- (c) The license fee for a tank tester shall not exceed six hundred dollars (\$600).
- (d) The nonrefundable reexamination fee is two hundred dollars (\$200).

- (e) The license renewal fee for a tank tester shall not exceed six hundred dollars (\$600).
- (f) The license reinstatement fee is two hundred dollars (\$200).
- (g) The fee for a duplicate license, to replace a lost, stolen or destroyed license is ten dollars (\$10).
- (h) The fee for the cost of a certified copy of any license or a certification of licensure is five dollars (\$5).
- (i) The fee for processing a dishonored check is fifteen dollars (\$15).

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2801 Copies of laws, rules, etc.; disposition

The Office of Tank Tester Licensing shall furnish one copy of the licensing law, rules, regulations, manuals, or guides to any applicant or licensee or other interested parties without charge.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2802 Refund of fees

Application and license fees are not refundable. Examination fees may be refunded only if the application is ~~denied or~~ rejected by the Office of Tank Tester Licensing, the Division Chief or the State Water Board.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

V. Final rulemaking documents

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INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND TANK TESTERS
(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

a. Updated Informative Digest

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(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

**UPDATED INFORMATIVE DIGEST
TANK TESTER LICENSING REGULATIONS**

There were no changes made to the originally proposed amendments to the regulations. Therefore, the original Informative Digest is still accurate.

b. Final Statement of Reasons
including responses to comments

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INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND TANK TESTERS
(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

FINAL STATEMENT OF REASONS TANK TESTER LICENSING REGULATIONS

There were no changes made to the originally proposed amendments to the regulations. Therefore, the initial statement of reasons is still accurate.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code Section 11346.5, subdivision (a)(7), the Board has determined that not alternative considered by it would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICTS

This is no mandate on local agencies or school districts.

SIGNIFICANT ADVERSE ECONOMIC EFFECT ON BUSINESS

The Board finds that the proposed action causes no adverse economic effect on business. No fees have been changed, and no new requirements are proposed that would result in either increased costs or cost savings.

RESPONSES TO COMMENTS

Tulare County Department of Health Services

This is a letter of support for the amendments to the regulations. The author suggests changes to the Health and Safety Code which are outside the scope of this rulemaking.

Tanknology Corporation International

This is also a letter of support for the amendments to the regulations. The author suggests the state consider a reciprocity program for licensing tank testers. This is outside the scope of this rulemaking.

c. Copy of Chapter 6.7, section
25284.4, Health and Safety Code
for reference

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(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

HEALTH AND SAFETY CODE

§ 25284.4. Tank integrity tester licensing; fees; examination; field experience; course of studies; civil liability of testers; sanctions

(a) * * * All tank integrity tests required by this chapter or pursuant to any local ordinance in compliance with Section 25299.1 shall be performed only by, or under the direct and personal supervision of, a tank tester with a currently valid tank testing license issued pursuant to this section. No person shall engage in the business of tank integrity testing, or act in the capacity of a tank tester, within this state * * * without first obtaining a tank testing license from the board. * * * Any person who violates this subdivision is guilty of a misdemeanor and may be subject to civil liability pursuant to subdivision (g).

(b) Any person proposing to conduct tank integrity testing within the state shall apply to the board for a tank testing license, and shall pay the appropriate fee established by the board. A license issued pursuant to this section shall expire three years after the date of issuance and shall be subject to renewal, except as specified in this section. If the tank tester fails to renew the tank tester's license within three years of the license's expiration date, the license shall lapse and the person shall apply for a new tank testing license and shall meet the same requirements of this section for a new applicant. A tank tester shall pay a fee to the board at the time of licensing and at the time of renewal. The board shall adopt a fee schedule for the issuance and renewal of tank testing licenses to cover the necessary and reasonable costs of administering and enforcing this section.

(c) (1) The board may establish any additional qualifications and standards for the licensing of tank testers. Each applicant for licensing as a tank tester shall pass an examination specified by the board and shall have completed a minimum of either of the following:

(A) One year of qualifying field experience by personally testing a number of underground storage tanks specified by the board.

(B) Completed six months of field experience by personally testing a number of underground storage tanks specified by the board and have successfully completed a course of study applicable to tank testing which is satisfactory to the board.

(2) The examination required by paragraph (1) shall, at a minimum, test the applicant's knowledge of all of the following:

(A) General principles of tank and pipeline testing.

(B) Basic understanding of the mathematics relating to tank testing.

(C) Understanding of the specific test procedures, principles, and equipment for which the tank tester will be qualified to operate.

(D) Knowledge of the regulations and laws governing the regulation of underground storage tanks.

(E) Proper safety procedures.

(d) The board shall maintain a current list of all persons licensed pursuant to this section, including a record of enforcement actions taken against these persons. This list shall be made available to local agencies and the public on request.

(e) A tank tester may be liable civilly in accordance with subdivision (g) and, in addition, may be subject to administrative sanctions pursuant to subdivision (f) for performing or causing another to perform, any of the following actions:

(1) Willfully or negligently violating, or causing, or allowing the violation of, this chapter or any regulations adopted pursuant to this chapter.

(2) Willfully or negligently failing to exercise direct and personal control over an unlicensed employee, associate, assistant, or agent during any phase of tank integrity testing.

(3) Without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, assistant, or agent to use any method or equipment which is demonstrated to be unsafe or unreliable for tank integrity testing.

HEALTH AND SAFETY CODE

- (4) Submitting false or misleading information on an application for license.
- (5) Using fraud or deception in the course of doing business as a tank tester.
- (6) Failing to use reasonable care, or judgment, while performing tank integrity tests.
- (7) Failing to maintain competence in approved tank testing procedures.
- (8) Failing to use proper tests or testing equipment to conduct tank integrity tests.
- (9) Any other action which the board may, by regulation, prescribe.

(f) (1) The board may suspend the license of a tank tester for a period of up to one year, and may revoke, or refuse to grant or renew, a license and may place on probation, or reprimand, the licensee upon any reasonable ground, including, but not limited to, those violations specified in subdivision (e). The board may investigate any licensed tank tester after receiving a written request from a local agency.

(2) The board shall notify the tank tester of any alleged violations and of proposed sanctions, before taking any action pursuant to this subdivision. The tank tester may request a hearing, or submit a written response within 30 days of the date of notice. Any hearing conducted pursuant to this subdivision shall be conducted in accordance with the hearing procedure specified in subdivision (g). After the hearing, or at a time after the 30-day response period, the board may impose the appropriate administrative sanctions authorized by this subdivision if it finds that the tank tester has committed any of the alleged violations specified in the notice.

(g) (1) The board may impose civil liability for a violation of subdivision (a) or (e) in accordance with Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code, in an amount which shall not exceed five hundred dollars (\$500) for each day in which the violation occurs, except that the chief of the division of water quality of the board or any other person designated by the board shall issue the complaint to the violator. The complaint shall be issued based on information developed by board staff or local agencies. Any hearing on the complaint shall be made before the board, or a panel thereof, consisting of one or more board members. The decision of the board shall be final upon issuance and may be reviewed pursuant to Section 13325 of the Water Code within 30 days following issuance of the order.

(2) Civil liability for a violation of subdivision (a) or (e) may be imposed by a superior court at the request of the board in an amount which shall not exceed two thousand five hundred dollars (\$2,500) for each day in which the violation occurs.

d. Clean text of regulations
(without underline and strikeout)

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INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND TANK TESTERS
(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

**Title 23, Division 3, Chapter 17
Tank Tester Licensing Regulations
D R A F T**

ARTICLE 1. GENERAL PROVISIONS

2730 Purpose

The State Water Board is vested with all the functions and duties relating to the administration of the Tank Tester License Program (section 25284.4 Health and Safety Code). Specifically, the purpose of the Tank Tester License Program is to protect the environment and public health and safety by establishing minimum qualifications for those who test underground storage tanks and associated piping and by establishing a licensing program for underground storage tank testers.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2731 Definitions

- (a) "Address of record" means the address at which the licensee wishes to be contacted by the State Water Board. The address of record is public information.
- (b) "Advertisement" means any written or printed communication for the purpose of soliciting, describing, or promoting the licensee's business including a brochure, letter, pamphlet, newspaper, periodical, or publication or other writing. Advertisement also includes a radio, television, or similar airwaves transmission, or videotape recording

which solicits or promotes the licensee's business. It does not include:

- (1) a free directory listing which does not allow space for a license number;
- (2) any printing or writing on buildings or vehicles where the purpose of the printing is identification;
- (3) any printing, writing, or other communication memoranda, or any other writing used in the ordinary course of business where the purpose of the communication is other than solicitation or promotion of business.
- (c) "Applicant" means any person who files an application for a tank tester license in accordance with the provisions of section 2761.
- (d) "Approved course of study" means a course of study approved by the Division after being recommended by a committee appointed by the Division and which includes, but is not limited to:
 - (1) General principles of tank and piping testing.

CCR, TITLE 23, DIVISION 3, CHAPTER 17, TANK TESTER LICENSING REGULATIONS

- (2) Basic understanding of the mathematics relating to tank testing;
- (3) Understanding of test procedures, principles, and equipment.
- (4) Knowledge of the regulations and laws pertaining to underground storage tanks.
- (5) Proper safety procedures.
- (6) Written examination to be administered to each student to determine the student's knowledge and understanding of the course of study material.
- (E) Physical location of classroom instruction.
- (F) Physical location of underground storage tanks to be used for hands-on training.
- (G) A copy of the written examination to be administered to students to determine their knowledge and understanding of the course of study material.
- (e) "Assignment" means giving permission to another to use one's license for the purpose of conducting the business of a tank tester, including advertising, billing, and furnishing reports to clients.

Anyone who desires to provide an approved course of study shall furnish the Division with the following material:

- (A) An instruction manual proposed for use by the instructor which covers all material and information to be given to students and which is in accordance with the provisions of subdivisions (d)(1)-(7) of this section.
- (B) Copies of all handout material to be given to students.
- (C) Copies of all video tapes to be used for instructional purposes.
- (D) Names, addresses, telephone numbers, and related work experience of each instructor and information as to the subject matter to be taught by each instructor.
- (f) "Declarant" means a person who verifies an applicant's tank testing experience by declaring personal knowledge of the experience in writing, under penalty of perjury.
- (g) "Direct and personal supervision" means the watchful care and inspection of the conduct and performance of a tank tester by a licensee while the licensee and the tank tester are physically located at the work site.
- (h) "Division" means the Division of the State Water Board in which the Office of Tank Tester Licensing is located.
- (i) "Fraud" or "deception" includes but is not limited to:
 - (1) knowingly making a false statement relating to the results of a tank integrity test or

CCR, TITLE 23, DIVISION 3, CHAPTER 17, TANK TESTER LICENSING REGULATIONS

- methods or information obtained in the course of employment;
- (2) fabricating evidence;
- (3) making a representation that any part of a tank integrity testing method or associated equipment is certified, approved, or in any way sanctioned by the State Water Board unless the method or equipment is actually certified, approved, or sanctioned by the State Water Board;
- (4) failing to provide the services for which compensation has been received or which were agreed to by contact.
- (5) filing a false tank test report with a state or local agency or tank owner or operator or providing test results for a tank or piping test which was not tested in whole or in part;
- (6) manipulating or causing the manipulation of test data including willfully or negligently misreading or misinterpreting test data;
- (7) accepting or agreeing to accept compensation for false test results.
- (j) "License" means a pocket card issued by the State Water Board which authorizes the licensee to conduct the business of an underground storage tank tester. The license shall contain but not be limited to the following:
 - (1) a clear, full-face; one inch by one inch color photograph taken within one year immediately preceding the date of filing the application;
 - (2) the first and last name of the licensee;
 - (3) the address of record of the licensee;
 - (4) the license number;
 - (5) the expiration date of the license. The license is the property of the State Water Board.
- (k) "Licensee" means any person licensed under these regulations as a tank tester and who possesses a current and valid tank tester license issued by the State Water Board.
- (l) "Local agency" means the department, office, or other agency of a county or city designated pursuant to section 25283 of the Health and Safety Code.
- (m) "Manufacturer" means any business which produces tank integrity testing equipment and which may provide training in the use of that equipment.
- (n) "Office of Tank Tester Licensing" means the unit of the Division which exercises the day-to-day functions of the Underground Tank Tester License Program.
- (o) "Qualifying Experience" means experience in all aspects of tank integrity testing including personally setting up and operating tank integrity testing equipment, collecting data and

producing reports under the direct and personal supervision of a licensed tank tester, during which time training is successfully completed from a manufacturer in the appropriate test procedures.

- (p) "State Water Board" as used in these regulations means the five members of the State Water Resources Control Board.
- (q) "Tank integrity test" means a tank integrity test as defined in section 2611 of Chapter 16 of the California Code of Regulations.
- (r) "Tank tester" means any person who performs integrity tests on underground storage tanks or associated piping.

Authority: H&SC 25284.4

Reference: H&SC 25284.4 and 25283

ARTICLE 2. ADMINISTRATION

2740 Record of Licensees

The Office of Tank Tester Licensing shall maintain a current roster of the names, addresses, telephone numbers, and license numbers of all licensed tank testers. The roster shall be furnished to local agencies at least twice per calendar year and shall be made available to local agencies and interested parties upon request.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2741 Record of Disciplinary Actions

Written information regarding disciplinary action taken against licensees shall be maintained by the Office of Tank Tester Licensing and information which meets the provisions of the Information Practices Act shall be furnished to local agencies as available and to interested parties upon request.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

ARTICLE 3. APPLICATION OF REGULATIONS

2750 Necessity of License

All tank integrity tests, as defined in section 2611 of Article 1 of Chapter 16 and conducted within this state, must be performed by or under the direct and personal supervision of a tank tester with a current and valid tank tester license issued pursuant to these regulations. No person shall be licensed unless the requirements as specified in Article 4 of these regulations have been met.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2751 Local Regulation; Ordinances

The provisions of these regulations shall not prevent the local authorities of any city, and/or county from: (a) requiring tank tester licensees to meet the requirements for and obtain a local business permit; (b) requiring licensees to register their name and file a copy of their State Water Board-issued tank tester license with the city

and/or county. No fee, other than a fee for a local business permit, may be charged nor may any application be required by the city and/or county for that registration.

Authority: H&SC 25284.4
Reference: H&SC 25299.2

ARTICLE 4. LICENSING

2760 License Requirements

An applicant for a tank tester license shall have successfully completed training from the manufacturer of the tank and piping test equipment to be used and shall:

- (a) have completed a minimum of either one year of verifiable qualifying experience testing at least 50 underground storage tanks or have successfully completed both 6 months of qualifying experience during which at least 50 underground storage tanks were tested and an approved course of study as defined in section 2731;
- (b) file with the Division a completed application as specified in section 2761;
- (c) pay the nonrefundable application fee and the examination fee as specified in Article 7;
- (d) provide two color photographs as described in section 2731;
- (e) pass an examination administered under the direction of the Division as specified in section 2762; and

- (f) pay the license fee as specified in Article 7 upon notification by the Division.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2761 Application for Licensure

- (a) Content - An application shall include but not be limited to:
 - (1) the full name, residence address, and the address of record of the applicant and the employer name and address if applicant is not self employed;
 - (2) a statement signed under penalty of perjury by a declarant, verifying the applicant's qualifying experience as specified in section 2760(a);
 - (3) verification that the applicant was trained by the manufacturer in the principles and use of the equipment and method which the applicant used to gain his or her qualifying experience and the tank and piping test equipment and method the applicant intends to use after licensure;
 - (4) applicant's original signature signed under penalty of perjury and date the application was signed;
 - (5) the nonrefundable application fee and the examination fee as specified in Article 7; and

(6) The Division may require the submission of any additional, pertinent information, evidence, statements, or documents which would support the application for licensure.

the requirements for an initial license.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

- (b) Submittal - An application shall be postmarked no later than three weeks before the examination. Applications postmarked after that date may be held over and processed for the next scheduled examination.
- (c) Review - The Division shall review the application supporting documents to determine the applicant's eligibility for licensure.
- (d) Notice - The Division shall notify applicants in writing within 15 days of receipt of an application whether the application is complete or deficient. The notice, if it indicates a deficiency, will state the specific information which is required to complete the application. If the application is deficient, the applicant may be scheduled for the next examination upon completion of the application.
- (e) Abandonment - If an applicant fails to complete an application within one year of the date of receipt by the Office of Tank Tester Licensing, or fails to take the examination within one year after the date of receipt of the application by the Office of Tank Tester Licensing, the application shall be considered abandoned. An application submitted after the abandonment of a previous application shall be treated as a new application and shall be required to meet all of

2762 Examination

- (a) Content - The examination shall include: (1) general principles of tank and piping tests; (2) basic understanding of the mathematics relating to tank and piping integrity testing; (3) knowledge of the regulations and laws governing underground storage tanks; and (4) proper safety procedures.
- (b) Frequency - A minimum of two examination shall be given each year.
- (c) Dishonest conduct during examination - An applicant for licensure as a tank tester who engages in dishonest conduct during the examination shall have his or her examination confiscated immediately and shall not have his or her examination graded and shall be denied the opportunity to take the examination for one year.
- (d) Confidentiality of examination questions - The Office of Tank Tester Licensing examination questions are confidential. Any person who removes all or part of an examination from the examination room or area, or who conveys or exposes all or part of an examination to any other person may be disqualified as a candidate for licensure for one year and in

addition may be subject to administrative sanction under section 2773.

- (e) Notification of results - Within 30 calendar days of the examination, the Division shall notify applicants in writing whether they have passed or failed the examination.
- (f) Failure to pass examination; reexamination fee - An applicant who fails to pass an initial examination shall be eligible for a subsequent examination upon paying the reexamination fee as prescribed by Article 7 and filing a completed application for reexamination within the time limits and conditions relating to applications for initial examinations provided in section 2761.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2763 Issuance of license, renewal and reinstatement

- (a) Issuance - Except as otherwise specified in these regulations, upon the successful completion of the application and examination and payment of the fees prescribed by these regulations, the Division shall issue a tank tester license within 30 calendar days of receipt of the license fee.
- (b) Renewal of licenses; notice; payment of civil penalties
 - (1) The Division shall send to each licensee a notice of renewal at

least 60 calendar days prior to the expiration of each license.

- (2) At least 30 calendar days prior to the expiration, a licensee who desires to renew his or her license shall send to the Division a completed renewal application as prescribed by section 2763(b)(2), and renewal fee as prescribed by Article 7.
- (3) Each license renewal application shall include the licensee's full name, business and residence address and telephone number, license number, and the name under which the licensee does business. Each application shall include two color photographs as prescribed by section 2731 and the renewal fee as prescribed by Article 7.
- (4) The Division shall notify licensees in writing within 15 calendar days of receipt of a license renewal application if the renewal application is deficient. The notice shall state the specific information which is required to complete the renewal application.
- (5) Except as otherwise prescribed by these regulations, the Division shall issue a license renewal within 30 calendar days of receipt of a completed renewal application.
- (6) The license renewal shall not be issued until any and all penalties assessed have been paid or

disciplinary actions have been completed in accordance with these regulations.

- (c) Notification of expiration; cessation of display - Upon the expiration of any license issued under these regulations, the holder of the license shall cease to carry or display the license and shall cease to conduct the business of a licensed tank tester.

- (d) Reinstatement following expiration - An expired license may be reinstated within one year of the date of expiration upon the filing of a reinstatement application and payment of the renewal fee and the reinstatement fee as prescribed by Article 7. The Division shall notify licensees in writing within 30 calendar days of receipt of a reinstatement application if the application is deficient. The notice shall state the specific information which is required to complete the application. A reinstated license shall be issued within 30) calendar days from the date of receipt of the a complete reinstatement application.

The reinstated license shall not be issued until any and all penalties assessed have been paid or until disciplinary actions have been completed. A license which has been expired for more than three years one year may not be reinstated. The applicant must file for an initial application, pass the examination, and meet all of the requirements for an initial license.

- (e) Each license reinstatement application shall state the licensee's full name, business and residence address and telephone numbers, license number, and the name under which the licensee does business. Each application shall include two color photographs as prescribed by section 2731 and the reinstatement and renewal fees as prescribed by Article 7.
- (f) Suspended license; expiration and renewal; restrictions on activities - A suspended tank tester license is subject to expiration and shall be renewed as provided in this article; however, renewal of the license does not entitle the licensee, while the license remains suspended and until it is reinstated, to engage in the business of a licensed tank tester, or in any other activity or conduct in violation of the order or judgment by which the license was suspended.
- (g) Revoked license - A revoked license may not be renewed or reinstated.
- (h) Assignment - A license issued under these regulations is not assignable.
- (i) License denial; grounds - A license may be denied by the Division pursuant to the provisions of section 2773.
- (j) Replacement of lost, stolen or destroyed licenses - A license which has been lost, stolen or destroyed may be replaced by the Division. A licensee may request a duplicate license by submitting a written statement of facts describing the loss,

theft, or destruction of the license and by submitting two color photographs as prescribed by section 2731 and the duplicate license fee prescribed by Article 7.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

ARTICLE 5. CONDUCT OF BUSINESS AND PROHIBITED ACTS

2770 Notice of change of address

A licensee shall notify the Division of any change of his or her residence and business addresses and telephone numbers within 30 calendar days after the change.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2770.5 Name and license number on tank test reports

A licensee who personally conducts a tank or piping integrity test shall complete and sign the resulting report in accordance with the provisions of section 2643(g) of Article 4 of Chapter 16 and shall include his or her license number on the report.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2771 Liability of licensee; employee records; completion of training for testing method used

- (a) A licensee shall at all times be responsible for the conduct and performance of those under the licensee's direct and personal supervision when those persons under supervision are acting within the course and scope of their employment as tank testers.
- (b) Each licensee shall maintain a record of the following information for each underground storage tank which he or she personally tested:
 - (1) name, address and telephone number of the tank owner or operator, physical address of the underground storage tank, and dates when the tank or piping test service was provided;
 - (2) all information and data collected and reports prepared in the course of performing service as a tank tester, including but not limited to raw data, calculations and reports;
 - (3) a list of persons working under the direct and personal supervision of the licensee including dates when the tank or piping test was performed.
- (c) Each licensee shall have completed training from a manufacturer for each test method used prior to using any test method. The licensee shall submit to the Office of Tank Tester Licensing, a certificate of completion or other proof of training issued by the manufacturer, before using the test method or equipment.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2772 Record retention period

Records, including those described in section 2771, shall be retained for a period of at least three years. These records shall be available for inspection by the Division and its agents upon demand, and copies thereof, and information pertaining thereto or therein, shall be submitted to the Division upon demand.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2773 Grounds for disciplinary action.

A tank tester may be liable civilly and in addition may be subject to administrative sanctions including, but not limited to, notices of warning, letters of caution, fine assessments, denial, suspension, probation, or revocation of his or her license in accordance with sections 25284.4(g) and (h) of the Health and Safety Code for performing or causing another to perform, any of the following acts:

- (a) willfully or negligently violating, causing, or allowing the violation of the provisions of Chapters 16 and 17;
- (b) willfully or negligently failing to exercise direct and personal supervision over an unlicensed employee, associate, assistant, or agent during any phase of tank or piping integrity testing;
- (c) without regard to intent or negligence, using or permitting a licensed or unlicensed employee, associate, or agent to use any tank or piping test method or equipment which is demonstrated to be unsafe or which does not meet the requirements of section 2643 of Chapter 16;
- (d) submitting false or misleading information in connection with an application for license or engaging in fraudulent or dishonest activity during the course of an examination for licensure;
- (e) using fraud or deception in the course of doing business as a tank tester;
- (f) failing to follow standard procedures set by the manufacturer of the equipment used and which were included in evaluating the equipment for conformance with EPA standards.
- (g) failing to maintain competence in the test method and procedures for which the tank tester received training and which the tank tester uses to test tanks and associated piping;
- (h) failing to use tank and piping test methods or equipment that has been determined to meet performance standards set by federal regulations in 40 CFR 280.40, 280.43, and 280.44;
- (i) failing to notify the Division within 30 calendar days of any change of

residence or business address and telephone numbers;

- (j) failing to include the licensee's name, address, and license number in any advertisement as defined in section 2731;
- (k) aiding or abetting an unlicensed tank tester or assigning a license as defined in section 2731;
- (l) failing to possess, while performing services, a license which shall be presented upon demand to the tank owner or operator, the Division or its agents or any state or local official;
- (m) failing to keep and maintain complete and correct records as described in sections 2771 and 2772;
- (n) violating section 17500 of the Business and Professions Code;
- (o) failing to have successfully completed training from a manufacturer of tank or piping test equipment in the test method being used by the licensee prior to using the test method; and
- (p) using tank or piping test equipment and procedures which do not meet the requirements of Article 4 of Chapter 16.

Authority: H&SC 25284.4

Reference: H&SC 25284.4, B&PC 17500

ARTICLE 6. APPEALS REGARDING DISCIPLINARY ACTION

2780 Disciplinary proceedings

A tank tester may be liable civilly in accordance with section 25284.4(h) of the Health and Safety Code and, in addition, may be subject to administrative sanctions pursuant to section 25284.4(g) of the Health and Safety Code for performing, allowing, or causing another to perform, any of the acts specified in section 2773.

Authority: H&SC 25284.4

Reference: H&SC 25284.4

2781 Action by Division

A licensee or applicant for licensure (hereafter referred to as "appellant" for the purposes of this Article) who wishes to appeal any discretionary decision made by the Office of Tank Tester Licensing or any violation of the time periods set forth in Article 4 may ask for a review by the Division Chief. The request for review must be in writing and must be postmarked within 30 calendar days of the announcement of examination results or notification of an Office of Tank Tester Licensing decision or violation of the time periods set forth in Article 4. The request for review must be accompanied by all evidence the appellant wishes to be considered by the Division Chief and by the State Water Board in any subsequent review.

The Division Chief shall review all evidence and the decision of the Office of Tank Tester Licensing and shall affirm, rescind, or modify the decision. The Division Chief's determination shall be in writing, labeled as the Division Chief's determination and shall inform the

appellant that the determination is final and conclusive unless, within 30 calendar days from the date of receipt of the determination, the appellant requests a review by the State Water Board.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2782 Requests for review by the State Water Board

- (a) A request for review by the State Water Board shall contain but not be limited to the following:
- (1) name and address of the appellant;
 - (2) a copy of the Office of Tank Tester Licensing decision and the Division Chief's determination which the State Water Board is requested to review;
 - (3) the manner in which the petitioner is aggrieved;
 - (4) the specific action which the appellant wishes the State Water Board to take;
 - (5) a copy of the evidence presented to the Division Chief prior to the determination;
- (b) The appellant may make a written request for a hearing before the State Water Board for the purpose of presenting evidence not provided to the Division Chief.

Any request to present evidence not provided to the Division Chief must

include a statement as to why the evidence was not presented to the Division Chief for review.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2783 Deficient requests for review

Upon receipt by the State Water Board of a request for review which does not comply with the provisions of section 2782, the State Water Board shall notify the appellant in what respect the request for review is deficient and the time within which an amended request for review may be filed. If a properly amended request is not received by the State Water Board within the time allowed, the request shall be denied unless good cause is shown for an extension of time.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2784 Recommendation by the Division Chief

A copy of the request for review and any accompanying evidence and statement(s) shall be sent to the Division Chief. The Division Chief shall file a response to the request with the State Water Board within 20 calendar days of the receipt of the request for review.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2785 Action by the State Water Board

- (a) The State Water Board may:
- (1) refuse to review the Division Chief's determination if the request for review is not filed in accordance with the provisions of sections 2782 and 2783.
 - (2) after review of the petition and the response of the Division Chief:
 - (A) deny the request upon a finding that the Division Chief's determination was proper; or
 - (B) set aside or modify the Division Chief's determination; or
 - (C) direct the Division to take other specified action.
- (b) Before taking final action, the State Water Board may hold a hearing for the purpose of oral argument or receipt of additional evidence or both; or, the State Water Board may provide for an informal meeting between the appellant, Division staff, and a member of the State Water Board and such other persons as the State Water Board deems necessary for arbitration.
- (c) If a hearing is held, the State Water Board shall give reasonable notice to the appellant, the Division, and other persons as the State Water Board deems appropriate, of the time and place of the hearing and the issues to be considered. The hearing shall be conducted in a manner deemed most suitable for securing all relevant evidence without unnecessary delay.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

ARTICLE 7. REVENUE

2800 Fees

- (a) The nonrefundable application fee for an initial tank tester license is one hundred dollars (\$100).
- (b) The examination fee for a tank tester license is two hundred dollars (\$200).
- (c) The license fee for a tank tester shall not exceed six hundred dollars (\$600).
- (d) The nonrefundable reexamination fee is two hundred dollars (\$200).
- (e) The license renewal fee for a tank tester shall not exceed six hundred dollars (\$600).
- (f) The license reinstatement fee is two hundred dollars (\$200).
- (g) The fee for a duplicate license, to replace a lost, stolen or destroyed license is ten dollars (\$10).
- (h) The fee for the cost of a certified copy of any license or a certification of licensure is five dollars (\$5).
- (i) The fee for processing a dishonored check is fifteen dollars (\$15).

Authority: H&SC 25284.4
Reference: H&SC 25284.4

**2801 Copies of laws, rules, etc.;
disposition**

The Office of Tank Tester Licensing shall furnish one copy of the licensing law, rules, regulations, manuals, or guides to any applicant or licensee or other interested parties without charge.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

2802 Refund of fees

Application and license fees are not refundable. Examination fees may be refunded only if the application is rejected by the Office of Tank Tester Licensing, the Division Chief or the State Water Board.

Authority: H&SC 25284.4
Reference: H&SC 25284.4

e. Form 399 Fiscal Impact
Statement

1994

INDEX TO RULEMAKING FILE FOR REGULATIONS GOVERNING UNDERGROUND TANK TESTERS
(CHAPTER 17, CHAPTER 3, TITLE 23, CALIFORNIA CODE OF REGULATIONS)

FISCAL IMPACT STATEMENT (REGULATIONS AND ORDERS)

STD 399 (5/86)

STATE OF CALIFORNIA

SEE SAM SECTION 6055 FOR INSTRUCTIONS

DEPARTMENT

CONTACT PERSON

PHONE NUMBER

Water Resources Control Board

David Holtry

227-4332

TITLE/DESCRIPTION OF REGULATION/ORDER

Tank Tester Licensing Regulations, CCR, Title 23, Division 3, Chapter 17

A. FISCAL EFFECT ON LOCAL GOVERNMENT (Indicate appropriate boxes 1 through 6 and complete if necessary)

- ☐ 1. Additional expenditures of approximately \$ _____ annually which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:
- ☐ a. is provided in (Item _____, Budget Act of _____) or (Chapter _____, Statutes of _____)
- ☐ b. will be requested in the _____ (FISCAL YEAR) Governor's Budget for appropriation in Budget Act of _____
- ☐ 2. Additional expenditures of approximately \$ _____ annually which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
- ☐ a. implements the Federal mandate contained in _____
- ☐ b. implements the court mandate set forth by the _____ court in the case of _____ vs. _____
- ☐ c. implements a mandate of the people of this State expressed in their approval of Proposition No. _____ at the _____ (DATE) election;
- ☐ d. is issued only in response to a specific request from the _____, which is/are the only local entity(s) affected;
- ☐ e. is more appropriately financed from the _____ (FEES, REVENUE, ETC.) authorized by Section _____ of the _____ Code;
- ☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.
- ☐ 3. Savings of approximately \$ _____ annually,
- ☒ 4. No additional costs or savings because this regulation makes only technical, nonsubstantive or clarifying changes to current law and regulations.
- ☒ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other _____

B. FISCAL EFFECT ON STATE GOVERNMENT (Indicate appropriate boxes 1 through 4 and complete if necessary)

- ☐ 1. Additional expenditures of approximately \$ _____, annually. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request supplemental funding by means of "Budget Change Proposals" for the _____ fiscal year.
- ☐ 2. Savings of approximately \$ _____ annually.
- ☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☒ 4. Other No fiscal impact on state government

C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS (Indicate appropriate boxes 1 through 4 and complete if necessary)

- ☐ 1. Additional expenditures of approximately \$ _____ annually.
- ☐ 2. Savings of approximately \$ _____ annually.
- ☐ 3. No fiscal impact exists because this regulation does not affect any federally funded State program or agency.
- ☐ 4. Other _____

SIGNATURE

TITLE

Dale Claybrook for WRP

Deputy Director

4/21/94

AGENCY SECRETARY
APPROVAL/CONCURRENCE

DATE

PROGRAM BUDGET MANAGER - DOF

DATE

DEPARTMENT OF FINANCE
APPROVAL/CONCURRENCE